



ALERT

IN AN EFFORT TO PROTECT PUBLIC HEALTH AND PREVENT THE SPREAD OF COVID-19 (CORONAVIRUS), THE CITY OF HEMET ENCOURAGES THE PUBLIC TO VIEW THIS CITY COUNCIL MEETING ONLINE INSTEAD OF ATTENDING IN PERSON. MEMBERS OF THE PUBLIC WHO WISH TO COMMENT ON MATTERS BEFORE THE COUNCIL, IN LIEU OF ATTENDING IN PERSON, MAY SUBMIT COMMENTS ON OR BEFORE 2:00 PM, TUESDAY, MARCH 24, 2020 ONLINE AND VIEW THE MEETING LIVESTREAMED ONLINE AT hemetca.gov/CouncilChamberLive. RESIDENTS MAY ALSO JOIN BY TELECONFERENCE AT THE PHONE NUMBER LISTED ON THE AGENDA.



AGENDAS

Closed Session and Regular City Council Meeting

City of Hemet

City Council Chamber

450 E. Latham Ave., Hemet, California 92543

Teleconference Number: (888)585-9008, when prompted dial: 768-176-038, please
mute your phone when not participating



Notice Regarding Americans with Disabilities Act

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting or if you need agenda documents provided in an alternative format, please contact the City Clerk's Office at 756-2689 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made (28CFR 35.102-35.104 ADA Title II)

CLOSED SESSION

Tuesday, March 24, 2020 – 6:00 p.m.

CALL TO ORDER: Mayor Brown

1. ROLL CALL

Mayor: Brown

Mayor Pro Tem: Krupa

Council Members: Meyer, Perciful, Wright

2. PUBLIC COMMENT PERIOD – Rules of Decorum, Resolution No. 4545

At this time, members of the public may only comment on an item appearing on the agenda. Please adhere to the following when addressing the Council:

- There is a temporary 2-minute-per-person time limit for all general public comments on non-public hearing items.
- Comments should be directed to the Council as a whole and not directed to individual Council Members.

3. DISCUSSION ITEMS

Item 3.A:

CONFERENCE WITH LABOR NEGOTIATORS

Government Code Section 54957.6

Agency Designated Representative: Christopher Lopez, City Manager

Employee Organization: HMMA, HNSPEA, and SEIU

Item 3.B:

CONFERENCE WITH LEGAL COUNSEL – Existing Litigation

Pursuant to Government Code section 54596.9(d)(1)

Name of case: Maria Gutierrez Valencia v. City of Hemet, Riverside Superior Court Case No. MCC1801397

Item 3.C:

CONFERENCE WITH LEGAL COUNSEL – Existing Litigation

Pursuant to Government Code section 54596.9(d)(1)

Name of case: Sidney Bell v. City of Hemet et. al, Riverside Superior Court Case No. MCC1900163

4. ADJOURNMENT OF CLOSED SESSION



REGULAR MEETING OF THE HEMET CITY COUNCIL

Tuesday, March 24, 2020 – 7:00 p.m.

CALL TO ORDER: Mayor Brown

1. ROLL CALL

Mayor: Brown
Mayor Pro Tem: Krupa
Council Members: Meyer, Perciful, Wright

2. INVOCATION

3. PLEDGE OF ALLEGIANCE

4. CITY ATTORNEY CLOSED SESSION REPORT

Item 4.A: City Attorney's Report regarding Closed Session

Recommendation: Information Only

5. COMMUNICATIONS FROM THE PUBLIC

Welcome to a meeting of the Mayor and City Council of the City of Hemet

- Anyone who wishes to speak during public comment or on a particular item will be required to fill out a speaker slip. Speaker slips must be turned in to the City Clerk. Each request will cover one speaker. Those who wish to speak must submit their own request to be called on by the Mayor.
- **There is a temporary 2-minute-per-person time limit for all general public comments on non-public hearing items.**
- All who wish to speak, including Council members and staff, need to be recognized by the Mayor before speaking.
- Members of the public shall comply with the adopted Rules of Decorum, Resolution No. 4545. A copy of which can be requested through the City Clerk's Office.
- You may also fill out a form and submit your comments online at www.hemetca.gov/CouncilChamberLive and it will be read aloud. Submittal must be done before 2:00 p.m. the day of the meeting.
- For those that wish to join by teleconferencing, you will be able to join by calling (888)585-9008, when prompted dial: 768-176-038. You will be asked for your name prior to speaking.
- Please turn off or mute your **Cell Phone** while the meeting is in session

Item 5.A Public Comments for Items Listed on the Agenda: Consent and Discussion Items

Item 5.B

Public Comments for Items not Listed on the Agenda, but within Jurisdictional Matter.

6. PRESENTATIONS

None.

7. RECEIVE AND FILE

None.

8. CONSENT CALENDAR

All Consent Calendar items will be acted upon by a single action of the City Council unless otherwise requested by an individual Council Member for separate consideration.

Item 8.A:

Approval of Minutes

Minutes of the March 10, 2020 Closed Session and Regular City Council Meeting and the March 16, 2020 Emergency Meeting (James)

Recommendation: Approve by vote to Consent Calendar.

Item 8.B:

A **Resolution** Awarding the Agreement for Services to Migrate the City's Existing ClearSCADA Applications onto New City Provided Hardware in the Amount of \$58,870 to Tesco Controls, Inc. and Authorize the City Manager to Execute all Documents Regarding this Purchase Order (Hults)

Recommendation: Adopt a Resolution by vote to Consent Calendar.

Item 8.C:

Approval of a Landscape Maintenance District No. 102 – Oak Tree Plaza Landscape Maintenance Services Agreement (Hults)

Recommendation: Approve by vote to Consent Calendar.

Item 8.D:

A **Resolution** Approving the Second Amendment to the Service Agreement between the City of Hemet and The Pun Group, LLC. Increasing the Original Contract Pricing Term of Agreement to a Total of \$246,000 and Authorizing the City Manager to Execute the Second Amendment to the Agreement with The Pun Group, LLC. (Rocha)

Recommendation: Adopt a Resolution by vote to Consent Calendar.

9. PUBLIC HEARING

The City Council's procedure for public hearings will be as follows:

- The Mayor will ask for the staff report and clarification of items presented, if needed.
- The Mayor will open the public hearing asking for comments for those IN FAVOR of or IN OPPOSITION to the item; followed by rebuttal to any comments made.
- The Mayor will then CLOSE THE PUBLIC HEARING and ask the City Manager to respond to any questions raised by the public (the public will not have the opportunity to respond).
- The Mayor will then bring the discussion back to City Council for direction or action.

Item 9.A: An **Ordinance** Amending Section 70-224 of Article VIII (Security Improvements) of Chapter 70 (Subdivisions) of the Hemet Municipal Code Relating to the City's Acceptance of Lien Agreements as Securities for Subdivision Improvement Agreements (Loriso)

Recommendation: Adopt an Ordinance Amending Section 70-224 of Article VIII (Security Improvements) of Chapter 70 (Subdivisions) of the Hemet Municipal Code Relating to the City's Acceptance of Lien Agreements as Securities for Subdivision Improvement Agreements

10. DISCUSSION – ACTION ITEMS

Item 10.A: An **Interim Ordinance** Prohibiting the Construction or Operation of Private Detention Centers and Community Detention Facilities for Unaccompanied Minors in the City of Hemet (Kang)

Recommendation: Adopt an Interim Ordinance Prohibiting the Construction or Operation of Private Detention Centers and Community Detention Facilities for Unaccompanied Minors in the City of Hemet

Item 10.B: Novel Coronavirus (COVID-19) Emergency Proclamation Update. (Murphy)

Recommendation: For information purposes only

11. CITY COUNCIL AND STAFF REPORTS

CITY COUNCIL REPORTS AND COMMENTS

A. Council Member Meyer

1. Community Action Commission of Riverside County
2. Community Outreach Committee
3. Investment Oversight Committee
4. Riverside County Habitat Conservation Agency (RCHCA) - Alternate

B. Council Member Perciful

1. Community Action Commission of Riverside County - Alternate
2. League of California Cities – Revenue and Taxation Committee
2. Planning Commission
3. Western Riverside County Regional Conservation Authority (RCA)
4. Riverside Transit Agency (RTA) - Alternate
5. Skate Park Committee

C. Council Member Wright

1. Community Outreach Committee
2. Planning Commission
3. Ramona Bowl Board
4. Western Riverside Council of Governments (WRCOG) – Executive Board and Administration and Finance Board
5. Western Riverside County Regional Conservation Authority (RCA) - Alternate
6. Southern California Association of Governments (SCAG) – Energy and Environment
7. Western Community Energy Board - Alternate
8. Skate Park Committee

D. Mayor Pro Tem Krupa

1. Hemet Public Library Board of Trustees
2. Hemet San Jacinto Watermaster Board
3. Investment Oversight Committee
4. League of California Cities – Executive Committee, Environmental Quality
5. Ramona Bowl Board
6. Riverside County Airport Land Use Commission
7. Riverside County Transportation Commission (RCTC)
8. Riverside County Waste Management Task Force
9. Riverside Transit Agency (RTA)
10. Southern California Association of Governments (SCAG) - Transportation

F. Mayor Brown

1. Hemet San Jacinto Watermaster Board – Alternate
2. Infrastructure Commission
3. League of California Cities – Transportation, Communications & Public Works Policy Committee
4. Riverside County Habitat Conservation Agency
5. Riverside County Transportation Commission – Alternate
6. Western Riverside Council of Governments – Alternate (WRCOG)
7. Western Community Energy Board

G. Ad-Hoc Committee Reports

1. Florida Avenue (SR 74) Ad-Hoc Committee (Krupa/Wright Jan. 8, 2019)
2. Community Development Based Grant (CDBG) Ad-Hoc Committee (Krupa/Perciful Dec. 10, 2019)
3. Council Protocols Ad-Hoc Committee (Brown/Krupa Feb. 25, 2020)

- H. City Manager Lopez
1. Manager's Report

12. FUTURE AGENDA ITEMS

If Members of Council have items for consideration at a future City Council meeting, please state the agenda item to provide direction to the City Manager.

- Housing Investment Opportunities/Vacant City Owned Infill Property
- Broadcasting of City Council Meetings
- Vagrancy and Pan Handling Laws
- Investment Portfolio Audit
- Council Protocols
- Special Events Funding Policy
- Street Vendor Permit Regulations and Enforcement
- Animal Control Regulations for Businesses
- Solar Feasibility

13. ADJOURNMENT

AFFIDAVIT OF POSTING

I, Clay James, Deputy City Clerk for the City of Hemet, declare under penalty of perjury that the foregoing amended agenda for the March 24, 2020 meeting(s) was posted on March 19, 2020 at City Hall, located at 445 E. Florida Ave, and Council Chamber at 450 E. Latham, Hemet, CA as well as on the City's website.

Clay James, Deputy City Clerk

Time:

- Meeting Schedule:** The City Council of the City of Hemet regularly meets on the second and fourth Tuesdays of each month at 7:00 p.m. unless otherwise noticed. Closed and Special sessions will be duly noticed as needed.
- Council Agendas:** Agendas for Regular Meetings are available for public review on the City's website at hemetca.gov and in the City Clerk's Office, 445 E. Florida Avenue typically by 4:00 p.m. on the Thursday prior to the meeting, but no later than 72 hours prior to the meeting. Agendas for Closed Sessions and other Special meetings are made available at least 72 hours prior to the meeting when possible, but no later than 24 hours prior to the meeting.
- Broadcasting:** Regular (livestreamed) City Council meetings are available for viewing 24/7 at hemetca.gov
- Use of Equipment:** Please contact the City Clerk's Office if requesting to use the chamber equipment as part of a scheduled presentation 24 hours prior to the meeting at (951)756-2384



City Council Staff Report

Agenda # 8.A

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Christopher Lopez, City Manager
Clay James, Deputy City Clerk

DATE: March 24, 2020

RE: Minutes of the March 10, 2020 Closed Session and Regular City Council Meeting and the March 16, 2020 Emergency Meeting

RECOMMENDED ACTION:

Approve by roll call vote to Consent Calendar.

BACKGROUND:

Attached for your consideration are the minutes of the March 10, 2020 Closed Session and Regular City Council Meeting and the March 16, 2020 Emergency Meeting.

FISCAL IMPACT:

None.

OPTIONS:

1. Approve as submitted
2. Provide edits and approve

ATTACHMENTS:

1. Minutes of the March 10, 2020 Closed Session and Regular City Council Meeting
2. Minutes of the March 16, 2020 Emergency Meeting

Respectfully Submitted,

Clay James
Deputy City Clerk



MINUTES

Closed Session and Regular City Council Meeting

City of Hemet
City Council Chamber
450 E. Latham, Hemet, California 92543

CLOSED SESSION

Tuesday, March 10, 2020 – 6:00 p.m.

The City Council of the City of Hemet met this date in a Closed Session at 6:00 p.m. in the City Council Chamber, 450 E. Latham Avenue, Hemet, California with Mayor Brown presiding.

CALL TO ORDER: Mayor Brown

1. ROLL CALL:

Deputy City Clerk James provided the Roll Call as follows:

Present:

Mayor: Brown
Mayor Pro Tem: Krupa
Council Members: Meyer, Perciful, Wright

Staff Present:

City Manager: Lopez
Assistant City Attorney: Vega
Deputy City Clerk: James

2. PUBLIC COMMENT PERIOD – Rules of Decorum, Resolution No. 4545

At this time, members of the public may only comment on an item appearing on the agenda. Please adhere to the following when addressing the Council:

- Comments will be limited to 3 minutes or less.
- Comments should be directed to the Council as a whole and not directed to individual Council Members.

Mayor Brown asked for Public Comments; the following citizen spoke: Judith McPherson. During Public Comment period, it was raised that the referenced California Government Code Section in Item 3.B was transposed. Assistant City Attorney Vega noted the correction as 54956.9(d)(2) for anticipated litigation.

Council convened into Closed Session at 6:02 p.m.

3. DISCUSSION ITEMS

Item 3.A:

CONFERENCE WITH LABOR NEGOTIATORS

Government Code Section 54957.6

Agency Designated Representative: Christopher Lopez, City Manager

Employee Organization: HMMA, HNSPEA, and SEIU

Item 3.B:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(d)(1)

One item.

Assistant City Attorney Vega noted the correct California Government Code for Item 3.B is 54956.9(d)(2).

4. ADJOURNMENT OF CLOSED SESSION

Council returned from Closed Session at 6:53 p.m.



REGULAR MEETING OF THE HEMET CITY COUNCIL

Tuesday, March 10, 2020 – 7:00 p.m.

The City Council of the City of Hemet met this date in a Regular Session at 7:00 p.m. in the City Council Chamber, 450 E. Latham Avenue, Hemet, California with Mayor Brown presiding.

CALL TO ORDER: Mayor Brown

1. ROLL CALL:

Deputy City Clerk James provided the Roll Call as follows:

Present:

Mayor: Brown
Mayor Pro Tem: Krupa
Council Members: Meyer, Perciful, Wright

Staff Present:

City Manager: Lopez
Assistant City Attorney: Vega
Deputy City Clerk: James

2. INVOCATION – Interfaith Council

Invocation was given by Jim Lineberger with the Interfaith Council.

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Perciful.

4. CITY ATTORNEY CLOSED SESSION REPORT

Item 4.A: City Attorney's Report regarding Closed Session

Recommendation: Information Only

Assistant City Attorney Vega reported there were no reportable actions from the 6:00 p.m. Closed Session.

5. COMMUNICATIONS FROM THE PUBLIC

Welcome to a meeting of the Mayor and City Council of the City of Hemet

- Anyone who wishes to speak during public comment or on a particular item will be required to fill out a speaker slip. Speaker slips must be turned in to the City Clerk. Each request will cover one speaker. Those who wish to speak must submit their own request to be called on by the Mayor.
- **There is a 3-minute-per-person time limit for all comments, including public or quasi-judicial hearings.**
- Written comments on any item may also be submitted to the City Clerk to be included in the meeting record; however, they will not be read aloud.
- All who wish to speak, including Council members and staff, need to be recognized by the Mayor before speaking.
- Members of the public shall comply with the adopted Rules of Decorum, Resolution No. 4545. A copy of which can be requested through the City Clerk's Office.
- Please turn off or mute your **Cell Phone** while the meeting is in session

Mayor Brown asked for Public Comments; no one spoke.

6. PRESENTATIONS

None.

7. RECEIVE AND FILE

Item 7.A: Warrant Registers dated February 13, 2020 in the amount of \$2,047,454.43 and February 27, 2020 in the amount of \$1,261,706.85 and Payroll for the period of January 27, 2020 to February 9, 2020 in the amount of \$684,233.59 and payroll for the period of February 10, 2020 to February 23, 2020 was \$677,601.74. (Rocha)

Action: Receive and File.

Motion by Council Member Perciful, second by Council Member Meyer to receive and file Item 7.A. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown

NOES: 0

8. CONSENT CALENDAR

All Consent Calendar items will be acted upon by a single action of the City Council unless otherwise requested by an individual Council Member for separate consideration.

Item 8.A: Approval of Minutes

Minutes of the February 25, 2020 Work Study Session and Regular City Council Meeting and the February 25, 2020 Special Closed Session (James)

Action: Approve by vote to Consent Calendar.

Item 8.B: Review and Approval of Street Name Assignment for Tract 24067 (Kang)

Action: Pulled for separate consideration.

Item 8.C: **Resolution No. 2020-017** Approving a Contract with Southern California EMS Training Institute for Advanced Life Support Training in the Amount of \$74,880.00 and Authorizing the City Manager to Execute all Documents Regarding the Purchase Order (Brown)

Action: Pulled for separate consideration.

Motion by Council Member Perciful, second by Council Member Meyer to approve Consent Calendar Item 8.A. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown

NOES: 0

Pulled Consent Calendar Items for Separate Consideration:

Item 8.B: Review and Approval of Street Name Assignment for Tract 24067 (Kang)

Community Development Director Kang gave the staff report.

Motion by Council Member Wright, second by Mayor Pro Tem Krupa to approve Consent Calendar Item 8.B per staff recommendation. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown

NOES: 0

Item 8.C: **Resolution No. 2020-017** Approving a Contract with Southern California EMS Training Institute for Advanced Life Support Training in the Amount of \$74,880.00 and Authorizing the City Manager to Execute all Documents Regarding the Purchase Order (Brown)

Fire Chief Brown and Police Captain Brock gave the staff report.

Motion by Council Member Meyer, second by Council Member Perciful to adopt Resolution No. 2020-017 and amendments to the resolution to reflect the contract compensation. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown

NOES: 0

9. PUBLIC HEARING

The City Council's procedure for public hearings will be as follows:

- The Mayor will ask for the staff report and clarification of items presented, if needed.
- The Mayor will open the public hearing asking for comments for those IN FAVOR of or IN OPPOSITION to the item; followed by rebuttal to any comments made.
- The Mayor will then CLOSE THE PUBLIC HEARING and ask the City Manager to respond to any questions raised by the public (the public will not have the opportunity to respond).
- The Mayor will then bring the discussion back to City Council for direction or action.

Item 9.A: Citizen Participation Plan for the Community Development Block Grant (Allen)

Action:

1. Conduct a public hearing and accept public comments regarding the draft Citizen Participation Plan; and
2. Receive and consider all comments for incorporation into the City of Hemet Citizen Participation Plan draft; and
3. Approve the Citizen Participation Plan.

Management Analyst Allen gave the staff report.

Mayor Brown opened the Public Hearing at 7:16 p.m. Mayor Brown asked for Public Comments; no one spoke. The Public Hearing was closed at 7:17 p.m.

Motion by Mayor Pro Tem Krupa, second by Council Member Wright to receive and approve the City of Hemet Citizen Participation Plan. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown

NOES: 0

10. DISCUSSION – ACTION ITEMS

Item 10.A: Acceptance and Approval of Allocations for 2020-2021 Program Year Community Development Block Grant Entitlement and Previously Unexpended Funding (Allen)

Action: Accept and Approve Allocations for 2020-2021 Program Year Community Development Block Grant Entitlement and Previously Unexpended Funding

Management Analyst Allen gave the staff report.

Mayor Brown asked for Public Comments; the following citizen spoke: Linda Rogers from Valley Restart Shelter.

Motion by Mayor Pro Tem Krupa, second by Council Member Perciful to accept and approve allocations for the Community Development Block Grant Entitlement 2020-2021 Program Year and Previously Unexpended Funding. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown
NOES: 0

Item 10.B: A Resolution Awarding the Purchase for One Fire Apparatus to the Rev Group in the Amount of \$738,824.00 and Authorizing the City Manager to Execute All Documents Regarding the Purchase Order (Brown)

Recommendation: Adopt a Resolution awarding the purchase for one fire apparatus to the Rev Group in the amount of \$738,824.00 and authorizing the City Manager to execute all documents regarding the purchase order.

Motion by Council Member Perciful, second by Council Member Wright approving the purchase for one fire apparatus to the Rev Group in the amount of \$738,824.00 and authorizing the City Manager to execute all documents regarding the purchase order. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown
NOES: 0

Motion by Council Member Perciful, second by Council Member Meyer to approve option 1 of the recommended actions: Purchase one (1) Fire Apparatus with a combination of earmarked FY19/20 Measure U funds (\$200,000) and existing Measure U Fund balance for a total cost of \$738,824. Passed 4/1.

AYES: 4 Council Members: Krupa, Meyer, Perciful, and Wright.
NOES: 1 Mayor Brown

Item 10.C: Approval of the Purchase of 911 Phone Hardware/Software with Electrical and Data Wiring Movement (Brown)

Action: Approve Purchase of 911 Phone Hardware/Software with Electrical and Data Wiring Movement

Motion by Council Member Meyer, second by Council Member Wright to approve the purchase of 911 phone hardware/software with electrical and data wiring movement at the Public Safety Dispatch Center. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown
NOES: 0

Item 10.D: **A Resolution No. 2020-019** Adopting a Revised Records Retention Schedule and Records Management Program for the City of Hemet and Authorizing the City Manager to Adopt and Promulgate Further Records Retention Policies; Rescinding Resolution Nos. 3427 and 4172 (James)

Action: Adopt Resolution No. 2020-019 Adopting a Revised Records Retention Schedule and Records Management Program for the City of Hemet and Authorizing the City Manager to Adopt and Promulgate Further Records Retention Policies; Rescinding Resolution Nos. 3427 and 4172

Deputy City Clerk James gave the staff report.

Motion by Council Member Meyer, second by Mayor Pro Tem Krupa to adopt Resolution No. 2020-019 adopting a revised records retention schedule and records management program for the City of Hemet and authorizing the City Manager to adopt and promulgate further records retention policies; rescinding Resolution Nos. 3427 and 4172. Passed 5/0.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown

NOES: 0

Item 10.E: FY 2020/21 Budget Update and Request for Direction

Action: Receive update on FY 2020/21 budget and Provide direction on whether Council would like to form a Council Ad Hoc Committee to stay updated throughout the FY2020/21 budget process.

Council provided direction to staff to present budget updates at City Council Meetings throughout the FY2020/21 budget process.

11. CITY COUNCIL AND STAFF REPORTS

Mayor Brown asked for Council Comments. Council Member Meyer, Council Member Perciful, Council Member Wright, Mayor Pro Tem Krupa, and Mayor Brown gave reports.

CITY COUNCIL REPORTS AND COMMENTS

- A. Council Member Meyer**
- 1. Community Action Commission of Riverside County**
 - 2. Community Outreach Committee**
 - 3. Investment Oversight Committee**
 - 4. Riverside County Habitat Conservation Agency (RCHCA) - Alternate**

B. Council Member Perciful

1. Community Action Commission of Riverside County - Alternate
2. League of California Cities – Revenue and Taxation Committee
2. Planning Commission
3. Western Riverside County Regional Conservation Authority (RCA)
4. Riverside Transit Agency (RTA) - Alternate
5. Skate Park Committee

C. Council Member Wright

1. Community Outreach Committee
2. Planning Commission
3. Ramona Bowl Board
4. Western Riverside Council of Governments (WRCOG) – Executive Board and Administration and Finance Board
5. Western Riverside County Regional Conservation Authority (RCA) - Alternate
6. Southern California Association of Governments (SCAG) – Energy and Environment
7. Western Community Energy Board - Alternate
8. Skate Park Committee

D. Mayor Pro Tem Krupa

1. Hemet Public Library Board of Trustees
2. Hemet San Jacinto Watermaster Board
3. Investment Oversight Committee
4. League of California Cities – Executive Committee, Environmental Quality
5. Ramona Bowl Board
6. Riverside County Airport Land Use Commission
7. Riverside County Transportation Commission (RCTC)
8. Riverside County Waste Management Task Force
9. Riverside Transit Agency (RTA)
10. Southern California Association of Governments (SCAG) - Transportation

F. Mayor Brown

1. Hemet San Jacinto Watermaster Board – Alternate
2. Infrastructure Commission
3. League of California Cities – Transportation, Communications & Public Works Policy Committee
4. Riverside County Habitat Conservation Agency
5. Riverside County Transportation Commission – Alternate
6. Western Riverside Council of Governments – Alternate (WRCOG)
7. Western Community Energy Board

G. Ad-Hoc Committee Reports

1. Florida Avenue (SR 74) Ad-Hoc Committee (Krupa/Wright Jan. 8, 2019)
2. Community Development Based Grant (CDBG) Ad-Hoc Committee (Krupa/Perciful Dec. 10, 2019)
3. Council Protocols Ad-Hoc Committee (Brown/Krupa Feb. 25, 2020)

- H. City Manager Lopez
1. Manager's Report

12. FUTURE AGENDA ITEMS

If Members of Council have items for consideration at a future City Council meeting, please state the agenda item to provide direction to the City Manager.

Mayor Brown asked if there were any changes to Future Agenda Items. No items were added.

- Housing Investment Opportunities/Vacant City Owned Infill Property
- Broadcasting of City Council Meetings
- Vagrancy and Pan Handling Laws
- Investment Portfolio Audit
- Council Protocols
- Special Events Funding Policy
- Street Vendor Permit Regulations and Enforcement
- Animal Control Regulations for Businesses
- Solar Feasibility

13. ADJOURNMENT

There being no further business, Mayor Brown adjourned the meeting at 9:05 p.m. The next Regular City Council Meeting will be at 7:00 p.m. on March 24, 2020.

APPROVAL:

ATTEST:

Mayor Russ Brown

Clay James
Deputy City Clerk



Minutes of the Emergency Meeting

City of Hemet City Council

City Council Chamber

450 E. Latham Ave., Hemet, California 92543

Teleconference Number: (888)585-9008, when prompted dial: 768-176-038

Monday, March 16, 2020 – 8:00 a.m.

The City Council of the City of Hemet met this date in an Emergency Meeting at 8:02 a.m. in the City Council Chamber, 450 E. Latham Avenue, Hemet, California with Mayor Brown presiding.

CALL TO ORDER: Mayor Brown

1. ROLL CALL:

Present:

Mayor: Brown
Mayor Pro Tem: Krupa
Council Members: Meyer, Perciful, Wright

Staff Present:

City Manager: Lopez
City Attorney: Vail (via teleconferencing)
Deputy City Clerk: James

2. DISCUSSION – ACTION ITEMS

At this time, Mayor Brown asked the Council to add a closed session item pursuant to Government Code 54957(a).

Motion by Mayor Pro Tem Krupa, second by Council Member Perciful to add the Closed Session item. Passed 4/1.

AYES: 4 Council Members: Krupa, Perciful, Wright, and Mayor Brown
NOES: 1 Council Member Meyer

Item 2.A: Consideration of a **Resolution No. 2020-018** Proclaiming the Existence of an Emergency Situation and Local Emergency Due to the Worldwide Spread of COVID-19

Action: Adopt Resolution No. 2020-018 Proclaiming the Existence of an Emergency Situation and Local Emergency Due to the Worldwide Spread of COVID-19

Mayor Brown asked for Public Comments on this item; the following citizen spoke: Judy Rice via teleconferencing.

Mayor Brown asked for Council Comments. At this time, Council provided direction to staff to make the COVID-19 local emergency item an ongoing agenda item for future Council Meetings.

Motion by Council Member Meyer, Second by Mayor Pro Tem Krupa to adopt Resolution No. 2020-018 with corrections to page 2, line 19: adding the word ‘States’ and to line 28: changing the Hemet Unified School District class and activity suspension to April 13, 2020.

AYES: 5 Council Members: Krupa, Meyer, Perciful, Wright, and Mayor Brown

NOES: 0

At this time, Council convened into Closed Session at 8:44 a.m.

3. CLOSED SESSION – DISCUSSION ITEMS

Item 3.A: Conference with Legal Counsel
Government Code Section 54957(a)
Discussion on matters posing a threat to Public Security

Council reconvened from Closed Session at 9:17 a.m.

Mayor Brown asked for a report from Closed Session. City Manager Lopez reported that the Hemet Public Library will be closed until April 30, 2020. Evaluations will be conducted prior to the reopening of the Library. Online library services will still be available to the Public.

4. ADJOURNMENT

There being no further business, Mayor Brown adjourned the meeting at 9:19 a.m. The next Regular City Council Meeting will be at 7:00 p.m. on March 24, 2020.



City Council Staff Report

Agenda # 8.B

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Christopher Lopez, City Manager
Charles Russell, Refuse Superintendent

DATE: March 24, 2020

RE: A **Resolution** Awarding the Agreement for Services to Migrate the City's Existing ClearSCADA Applications onto New City Provided Hardware in the Amount of \$58,870 to Tesco Controls, Inc. and Authorize the City Manager to Execute all Documents Regarding this Purchase Order.

RECOMMENDED ACTION:

Adopt a Resolution awarding the professional services agreement to migrate the City's existing ClearSCADA applications onto new City provided hardware in the amount of \$58,870 to Tesco Controls, Inc. and authorize the City Manager to execute all documents regarding this purchase order.

BACKGROUND:

For the last eight years the City of Hemet Water Division has operated the ClearSCADA (Supervisory Control and Data Acquisition) System, which allows operational status of the City's wells and tanks to be monitored remotely from the Corporation Yard and staff laptops in the field. Staff can monitor flow rates, pressures, chlorine residual and water and chlorine levels. The remote capabilities enhance staff's ability to troubleshoot any problems that may arise 24 hours a day, 7 days a week.

The current servers for the ClearSCADA system are outdated and are not compatible with the new Microsoft Operating System or ClearSCADA updates. Tesco Controls Inc. has provided pricing for the professional services required to migrate the City's existing ClearSCADA applications onto the new City provided server hardware, Microsoft Operating Systems. This project involves a software and data migration of existing configurations, new hardware configuration, and adding a new configuration of export reports needed for local, state and federal reporting. All new hardware for this project was procured separately following the City's procurement policy. This ensured the lowest cost and highest levels of compatibility, reliability and warranty with other City systems.

Tesco Controls Inc. will provide onsite implementation, testing and start-up of the new system following the installation of all hardware and software. City staff will then visit Tesco's facility to review the finalized configuration and comment on any additional features and functions that may be desired. Additionally, Tesco Controls Inc. will transition any existing and available historical data to the newly upgraded system and provide training to City staff.

FISCAL IMPACT:

There are no General Fund impacts. Funding for migrating the City's existing ClearSCADA Applications onto new City provided hardware in the amount of \$58,870 is budgeted in FY 19/20 in Fund 571-9000-2400.

ATTACHMENTS:

1. Resolution
2. Exhibit A to Resolution – Tesco Control, Inc. Agreement for Services
3. Attachment 1 – Tesco Control Inc. Quote #18I097Q05

Respectfully Submitted,

Charles Russell
Refuse Superintendent



**CITY OF HEMET
Hemet, California
RESOLUTION NO. 2020-XXX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, AWARDDING THE AGREEMENT FOR SERVICES TO MIGRATE THE CITY'S EXISTING CLEARSCADA APPLICATIONS ONTO NEW CITY PROVIDED HARDWARE TO TESCO CONTROLS, INC. AND AUTHORIZE THE CITY MANAGER TO EXECUTE ALL DOCUMENTS REGARDING THIS PURCHASE ORDER.

WHEREAS, the City of Hemet Water Department has used the ClearSCADA system for the past eight years to monitor its wells and tanks from the Corporation Yard and staff laptops in the field; and

WHEREAS, the current servers for the ClearSCADA system are outdated and are not compatible with the new Microsoft Operating System or ClearSCADA updates; and

WHEREAS, Tesco Controls Inc., has provided pricing for the professional services required to migrate the City of Hemet's Water Department existing ClearSCADA applications onto new City provided server hardware; and

WHEREAS, installing new updated servers will allow the ClearSCADA system to install updates and export reports needed for local, state and federal reporting; and

WHEREAS, funding for this project is available in Fund 571-9000-2400.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES HEREBY FIND AND RESOLVE:

1. Approve the agreement attached hereto as exhibit A for services to migrate the City's existing ClearSCADA applications onto new City provided hardware in the amount of \$58,870 with Tesco Controls Inc.

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2. Authorize the City Manager to approve purchase orders in support of this agreement.

PASSED, APPROVED AND ADOPTED this 24th day of March, 2020.

Russ Brown, Mayor

ATTEST:

Clay James, Deputy City Clerk

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State of California)
County of Riverside)
City of Hemet)

I, Clay James, Deputy City Clerk of the City of Hemet, do hereby certify that
the foregoing resolution was adopted by the Hemet City Council on the 24th day of
March, 2020, and was passed by the following vote:

AYES:	Council Members:
NOES:	Council Member:
ABSTAIN:	Council Member:
ABSENT:	Council Member:

Clay James, Deputy City Clerk

EXHIBIT A
Agreement with Tesco Controls, Inc.

AGREEMENT FOR SERVICES

By and Between

**THE CITY OF HEMET,
a California municipal corporation**

and

**TESCO CONTROLS, INC.,
a California corporation**

**AGREEMENT FOR SERVICES
BETWEEN
THE CITY OF HEMET, CALIFORNIA
AND
TESCO CONTROLS, INC.**

This Agreement for Services ("Agreement") is entered into as of this 10th day of March, 2020 by and between the City of Hemet, a California municipal corporation ("City") and Tesco Controls, Inc., a California Corporation ("Service Provider"). City and Service Provider are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by direct negotiation the performance of the services defined and described particularly in Section 2 of this Agreement.

B. Service Provider, following submission of a proposal for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Hemet's Municipal Code, City has authority to enter into this Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Service Provider for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and for other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of Section 20 "Termination of Agreement" of this Agreement, the Term of this Agreement ("Term") is for six (6) months commencing on the date first ascribed above.

SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

(a) Scope of Services. Service Provider agrees to perform to the satisfaction of the City the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.

(b) Schedule of Performance. The Services shall be completed to the satisfaction of the City pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Service Provider shall be deemed to be in default of this Agreement. The City, in its sole discretion, may choose not to enforce the default provisions of this Agreement and may instead allow Service Provider to continue performing the Services.

SECTION 3. ADDITIONAL SERVICES.

Service Provider shall not be compensated for any Services rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 26 "Administration and Implementation" or Section 28 "Amendment" of this Agreement. If and when such additional Services are authorized, such additional Services shall be deemed to be part of the Services.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Service Provider the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual and reasonable expenses, shall not exceed fifty-eight thousand four hundred twenty dollars (\$58,420.00), unless additional compensation is approved in writing in accordance with Section 26 "Administration and Implementation" or Section 28 "Amendment" of this Agreement.

(b) Each month Service Provider shall furnish to City an original invoice for all Services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of tasks performed and the amount of time incurred for or allocated to that task. City shall independently review each invoice submitted by the Service Provider to determine whether the Services performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection

(c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Service Provider for correction and resubmission.

(c) Except as to any charges for Services performed or expenses incurred by Service Provider which are disputed by City, City will use its best efforts to cause Service Provider to be paid within forty-five (45) days of receipt of Service Provider's correct and undisputed invoice.

(d) Payment to Service Provider for Services performed pursuant to this Agreement shall not be deemed to waive any defects in Services performed by Service Provider.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Service Provider's Services under this Agreement, either during performance or when completed. City shall reject or finally accept Service Provider's Services within sixty (60) days after submitted to City. City shall reject Services by a timely written explanation, otherwise Service Provider's Services shall be deemed to have been accepted. City's acceptance shall be conclusive as to such Services except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Service Provider's Services by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 16 "Indemnification" and Section 17 "Insurance."

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Service Provider in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Service Provider. Upon completion, expiration or termination of this Agreement, Service Provider shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Service Provider in the course of providing the Services pursuant to this Agreement, Service Provider's guarantees and warranties in Section 9 "Standard of Performance" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 7. SERVICE PROVIDER'S BOOKS AND RECORDS.

(a) Service Provider shall maintain any and all documents and records demonstrating or relating to Service Provider's performance of the Services. Service Provider shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, Services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the Services provided by Service Provider pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Service Provider's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Service Provider's business, City may, by written request, require that custody of such documents or records be given to the City. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

SECTION 8. INDEPENDENT CONTRACTOR.

(a) Service Provider is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Service Provider shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) The personnel performing the Services under this Agreement on behalf of Service Provider shall at all times be under Service Provider's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Service Provider or any of Service Provider's officers, employees, or agents except as set forth in this Agreement. Service Provider shall not at any time or in any manner represent that Service Provider or any of Service Provider's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Service Provider, nor any of Service Provider's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Service Provider expressly waives any claim Service Provider may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

Service Provider represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Service Provider shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Service Provider shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Service Provider under this Agreement. In addition to the general standards of performance set forth in this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Services" that shall also be applicable to Service Provider's Services under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Service Provider shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the Term of this Agreement. Service Provider shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Service Provider to comply with this section.

SECTION 11. PREVAILING WAGE LAWS.

It is the understanding of City and Service Provider that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

SECTION 12. NONDISCRIMINATION.

Service Provider shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

SECTION 13. UNAUTHORIZED ALIENS.

Service Provider hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Service Provider so employ such unauthorized aliens for the performance of the Services, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Service Provider hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

SECTION 14. CONFLICTS OF INTEREST.

(a) Service Provider covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Service Provider's performance of the Services. Service Provider further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Service Provider agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

(b) City understands and acknowledges that Service Provider is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Service Provider is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(c) City understands and acknowledges that Service Provider will perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by Service Provider in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Service Provider. Service Provider shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Service Provider, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the Services performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Service Provider gives City notice of such court order or subpoena.

(c) If Service Provider, or any officer, employee, agent or subcontractor of Service Provider, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Service Provider for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Service Provider's conduct.

(d) Service Provider shall promptly notify City should Service Provider, its officers, employees, agents or subcontractors, be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the Services performed thereunder. City retains the right, but has no obligation, to represent Service Provider or be present at any deposition, hearing or similar proceeding. Service Provider agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Service Provider. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

SECTION 16. INDEMNIFICATION.

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Service Provider's Services, to the fullest extent permitted by law, Service Provider shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Service Provider, or by any individual

or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or subcontractors of Service Provider, in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional Services and to the full extent permitted by law, Service Provider shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Service Provider, or by any individual or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or subcontractors of Service Provider.

(c) Indemnification from Subcontractors. Service Provider agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Service Provider in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Service Provider fails to obtain such indemnity obligations from others as required herein, Service Provider agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Service Provider and shall survive the termination of this Agreement or this section.

(d) Limitation of Indemnification. Notwithstanding any provision of this section to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code Section 2782.8, which limits the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(e) City's Negligence. The provisions of this section do not apply to claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

SECTION 17. INSURANCE.

Service Provider agrees to obtain and maintain in full force and effect during the Term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Service Provider agrees to provide City with copies of required policies upon request.

SECTION 18. ASSIGNMENT.

The expertise and experience of Service Provider are material considerations for this Agreement. City has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Service Provider under this Agreement. In recognition of that interest, Service Provider shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Service Provider's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 20 "Termination of Agreement." City acknowledges, however, that Service Provider, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 19. CONTINUITY OF PERSONNEL.

Service Provider shall make every reasonable effort to maintain the stability and continuity of Service Provider's staff and subcontractors, if any, assigned to perform the Services. Service Provider shall notify City of any changes in Service Provider's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

SECTION 20. TERMINATION OF AGREEMENT.

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Service Provider. In the event such notice is given, Service Provider shall cease immediately all Services in progress.

(b) Service Provider may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Service Provider or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Service Provider, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Service Provider or City, all property belonging exclusively to City which is in Service Provider's possession shall be returned to City. Service Provider shall furnish to City a final invoice for Services performed and expenses incurred by Service Provider, prepared as set forth in Section 4 "Compensation and Method of Payment" of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 "Compensation and Method of Payment" of this Agreement.

SECTION 21. DEFAULT.

In the event that Service Provider is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Service Provider for any Services performed after the date of default. Instead, the City may give notice to Service Provider of the default and the reasons for the default. The notice shall include the timeframe in which Service Provider may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Service Provider is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Service Provider does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20 "Termination of Agreement." Any failure on the part of the City to give notice of the Service Provider's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

SECTION 22. EXCUSABLE DELAYS.

Service Provider shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Service Provider. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The Term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 23. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Services shall be furnished to Service Provider in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

SECTION 24. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: City of Hemet
Attn: City Manager
445 E. Florida Avenue
Hemet, CA 92543

To Service Provider: Tesco Controls, Inc.
Attn: Corporate Office
P.O. Box 299007
Sacramento, CA 95829

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 25. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Service Provider represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Service Provider to the performance of its obligations hereunder.

SECTION 26. ADMINISTRATION AND IMPLEMENTATION.

This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 28 "Amendment" and the City Manager's contracting authority under the Hemet Municipal Code.

SECTION 27. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

SECTION 28. AMENDMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Service Provider and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City

Manager's contracting authority under the Hemet Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 29. WAIVER.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or Services by Service Provider shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 30. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

SECTION 31. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 32. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits "A" through "C," is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Service Provider and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

SECTION 33. SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 34. CONFLICTING TERMS.

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY OF HEMET

Christopher R. Lopez
City Manager

ATTEST:

Clay James
Deputy City Clerk

APPROVED AS TO FORM

Eric S. Vail
City Attorney

SERVICE PROVIDER

TESCO Controls, Inc.

By: _____
Its: _____

By: _____
Its: _____

NOTE: SERVICE PROVIDER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO SERVICE PROVIDER'S BUSINESS ENTITY.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signer is representing:
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Number Of Pages

Date Of Document

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EXHIBIT "A"

SCOPE OF SERVICES

I. Service Provider will perform to the satisfaction of the City the following Services:

A. Migrate the City's existing ClearSCADA applications onto new City-provided server hardware, Microsoft Operating Systems, and view hardware and software provided by the City. It is understood that this project involves a software and hardware refresh of the existing configuration. Service Provider's team will recreate the existing configuration.

B. Service Provider's VMware and ClearSCADA Engineering team will:

1. Install VMware ESXi software (provided by the City) onto a new host server and provide configuration and initial testing of the virtual environment. Service Provider's configuration will include:

a. Installation and configuration of VMware vCenter Server (Windows or vCSA appliance) in virtual environment. All virtual machines will include Microsoft VSS enabled.

b. Service Provider will install and configure a new Domain Controller virtual machine to be dedicated to the process control system.

c. Service Provider will install VMWare Update Manager within the new Domain Controller virtual machine that will also include integration of VMWare access within the new Domain Controller, however, automatic updates will be disabled.

d. Service Provider will install and configure HP iLO on the provided server.

e. Service Provider's engineers will work with City IT Department to configure appropriate VLANS for network segregation.

f. Service Provider's engineers will work with City IT Department for the installation of network lag from physical host to HPE networking equipment and work with City IT Department to perform a virtual to virtual move of the existing SCADA Active Directory (AD) environment. The existing SCADA AD environment will be fully transitioned to Microsoft Server 2016 with the assistance of City IT Department.

g. Service Provider will provide configuration of the upgraded ClearSCADA software application, Historian, and communication drivers within a Windows virtual machine.

h. Service Provider will configure and test three (3) ViewX client workstations on hardware and Windows-I0 software provided by the City.

i. Service Provider will commission a WebX server VM and a Jump Box Server VM within host server hardware and software provided by the City and these VM's will be used for remote access to the SCADA system. Remote connections will be established through the VPN and then to the Jump Box. A secondary (internal) connection can be made between the jump box server and the WebX server for WebX access. (The actual host computer to be configured within the DMZ).

j. Existing Win-911 alarm dialer software will be decommissioned by Service Provider as a part of this project. Service Provider's engineers will configure ClearSCADA's integrated alarm notification software as a replacement for Win-911. City IT Department will provide the necessary email server access to provide a fully functional alarm notification system.

k. Service Provider shall configure Microsoft WSUS services and policies for Microsoft updates that can be deployed once the updates have been tested by ClearSCADA's support engineers and the City within a simulated SCADA environment.

l. Service Provider shall install and appropriately configure City-owned antivirus (Trend) on all SCADA servers and workstations and test to ensure compatibility.

m. Service Provider shall assist City IT Department staff with the integration of HPE SCADA host into existing City of Hemet HPE OneView environment for monitoring.

n. The upgraded application will be tested, and Service Provider will perform basic system hardening procedures which Service Provider will include as part of its virtualization process.

2. Service Provider will decommission the existing SCADA software and hardware once the new system has been commissioned and tested.

3. Service Provider will configure up to seven laptop computers for SCADA remote access. If the City chooses to replace the existing remote access laptops with new laptops during the course of this project, Service Provider will program up to seven additional new laptops (provided by the City) for remote access at no additional cost.

4. Service Provider will provide documentation and training on the new configuration and create a full system backup for off-site storage.

II. As part of the Services, Service Provider shall also provide the following to the City:

A. Project Management for professional Services and backup software.

B. SCADA Programming

1. Receive City-provided hardware and software;
2. Setup SCADA servers and related hardware for applicable SCADA features as described in Scope of Work;
3. Install and configure the server operating systems and supporting software;
4. Transitioning of existing ClearSCADA application onto new hardware and items 1-3 above;
5. Factory and field testing.

C. Networking/Communications/Telemetry

1. Configuration of appropriate VLANS and configuration modifications as necessary.

D. Product Startup Services

1. Product quality review;
2. Verification of product installation;
3. Product parameter adjustments;
4. Product programming as required;
5. Software upload/download as required;
6. Product/equipment reconfiguration as required;
7. Product function checks;
8. Product start-up.

III. City Obligations.

A. It is understood that the City is presently under a support contract with ClearSCADA for all process control software required for this upgrade and the City will keep that support contract active so that new SCADA software licenses can be requested from the manufacturer at no cost. The City has agreed to provide and release all hardware and software/licensing for this project to our SCADA team for configuration and testing at Tesco Control's Sacramento Facility.

B. City has already purchased the VEEAM software and will work with Service Provider to configure VEEAM virtualization backup software (all software and hardware to be provided by City) on the ClearSCADA Host computer within its own virtual machine. City IT Department staff will assist Service Provider's engineers with re-

using the existing Synology NAS device as the target for the nightly VEEAM backups and Service Provider shall automate the backup process to industry standards.

IV. During performance of the Services, Service Provider will keep the City appraised of the status of performance by delivering the following status reports:

A. Bi-weekly status reports via email.

V. The tangible work products and status reports will be delivered to the City pursuant to the following schedule:

A. Schedule to be determined with City staff after City Council award.

EXHIBIT "B"
COMPENSATION

I. Service Provider shall use the following rates of pay in the performance of the Services:

- A. Project Management \$170.00/hour
- B. SCADA Programming \$170.00/hour
- C. Net./Comm./Tel. \$170.00/hour
- D. Product Startup \$170.00/hour
- E. Onsite Training \$170.00/hour
- F. Travel Expenses Estimated at \$1,470.00 total

EXHIBIT "C"

INSURANCE

A. Insurance Requirements. Service Provider shall provide and maintain insurance, acceptable to the City, in full force and effect throughout the Term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Service Provider, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Service Provider shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Commercial General Liability. Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Automobile. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation. Workers' Compensation insurance as required by the Labor Code of State of California covering all persons providing Services on behalf of the Service Provider and all risks to such persons under this Agreement.

(4) Professional Liability. Professional liability insurance appropriate to the Service Provider's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Service Provider's Services or the termination of this Agreement. During this additional three (3) year period, Service Provider shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Service Provider shall maintain limits of insurance no less than:

(1) Commercial General Liability. \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile. \$1,000,000 per accident for bodily injury and property damage. A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits set forth above.

(3) Workers' Compensation. Workers' Compensation as required by the Labor Code of the State of California of not less than \$1,000,000 per occurrence.

(4) Professional Liability. \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Policies. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

2. Commercial General Liability and Automobile Liability Coverages.

(1) City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Service Provider performs; products and completed operations of Service Provider; premises owned, occupied or used by Service Provider; or automobiles owned, leased, hired or borrowed by Service Provider. The coverage shall contain no special limitations on the scope of protection afforded to City, and its respective elected and appointed officers, officials, or employees.

(2) Service Provider's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Service Provider's insurance.

(3) Service Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage

provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from Services performed by Service Provider.

C. Other Requirements. Service Provider agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this Agreement have been complied with. The City may require that Service Provider furnish City with copies of original endorsements effecting coverage required by this Exhibit "C." The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Service Provider shall furnish certificates and endorsements from each subcontractor identical to those Service Provider provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers, or the Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Service Provider's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.



City Council Staff Report

Agenda # 8.C

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Christopher Lopez, City Manager
Tim Hults, Interim Public Works Director

DATE: March 24, 2020

RE: Landscape Maintenance District No. 102 – Oak Tree Plaza Landscape Maintenance Services Agreement

RECOMMENDED ACTION:

It is respectfully recommended that the City Council Approve the Landscape Maintenance Services Agreement between the property owner and City of Hemet related to Landscape Maintenance District No. 102 (Oak Tree Plaza).

BACKGROUND:

On May 24, 2016 the City Council, by Resolution No. 4674, approved the formation of the City of Hemet Landscape Maintenance District No. 102, Oak Tree Plaza. Assessment districts are formed to support the costs of maintained improvements that provide special benefit to properties within the district. These improvement benefits generally include: perimeter landscape, medians, planting materials, trees, public pedestrian paths and street lights. The City of Hemet annually levies and collects special assessments from Landscape Maintenance Districts (LMD) throughout the City to fund the maintenance of such improvements. On July 12, 2016, a Public Hearing was conducted to approve the Engineer's Report and Levy and Collection of Assessment for LMD No. 102. Ballots received were in support of the LMD.

Occasionally, a property owner will request a forbearance of levy and collection of assessments from the City, provided the property owner maintains the landscape areas within the Landscape Maintenance District. Staff evaluates these types of requests on a case-by-case basis. In the event the request is approved, a landscape maintenance services agreement between the property owner and the City is created outlining the terms, property owner's obligation, and actions to be taken by either party in the event of default.

The property owner of the parcel located within LMD No. 102 has made such a request of the City of Hemet and wishes to enter into a landscape maintenance services

agreement (Attachment 1) with the City of Hemet, and to maintain the landscaped right-of-way area associated with their property.

The Property Owner will be assessed \$0 annually as long as the landscaping and appurtenant structures are maintained in accordance with the City's Landscape Maintenance District Standards as referenced in the Agreement. In the event the right of way landscaping is not maintained as required by the Agreement, the City will assume the actual operation, maintenance, and servicing of landscaping and appurtenant structures. In addition, the City will initiate assessments on the property for the full cost of maintenance in accordance with the budget and terms stated in the approved Engineer's Report for LMD No. 102.

FISCAL IMPACT:

No fiscal impact.

ATTACHMENTS:

1. Attachment 1 – Landscape Maintenance Services Agreement for LMD 102 (Oak Tree Plaza)

Respectfully Submitted,

Tim Hults
Interim Public Works Director

**LANDSCAPE MAINTENANCE SERVICES AGREEMENT
for LMD 102 (OAK TREE PLAZA)**

by and between

**THE CITY OF HEMET,
a municipal corporation**

and

**FADI MANSUR,
Property Owner of APN 438-240-042-9**

DATED February 28, 2020

LANDSCAPE MAINTENANCE SERVICES AGREEMENT

This Landscape Maintenance Services Agreement ("Agreement") is effective as of February 28, 2020, between the City of Hemet, a California municipal corporation ("City") and Fadi Mansur, an individual ("Property Owner") for landscape maintenance services. City and Property Owner are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

- A. Property Owner owns a parcel within the boundaries of the City located generally north of Florida Avenue, south of Vista Way, east of Columbia Street and west of Cornell Street with an address of 2888 E. Florida Avenue, Hemet, California, 92544, Assessor Parcel No. 438-240-042-9 (the "Property"). Oak Tree Plaza is located on the Property.
- B. In satisfaction of a condition of approval for development of Oak Tree Plaza, Landscape Maintenance District No. 102 was created by City Council approval of Resolution 4698 ("LMD 102") and Property Owner affirmative vote.
- C. LMD 102 is a special assessment district formed pursuant to the Landscape and Lighting Act of 1972, Streets and Highways Code section 22500 et seq. and is authorized to levy and collect special assessments against the Property to pay for the costs and expenses of installing, operating, maintaining, and servicing certain landscaping improvements within City right-of-ways adjacent to the Property which specifically benefit the Property Owner. A diagram of the landscape improvement areas within LMD 102 ("Landscape Areas") is attached hereto and incorporated herein as Exhibit A. The City currently has the upkeep and maintenance responsibility for the Landscape Areas.
- D. To date, LMD 102 has assessed Property Owner a total of \$5,028.92.00 for services to the Landscape Areas.
- E. Property Owner desires to assume responsibility for the maintenance of the Landscape Areas, including all landscape improvements located herein, as set forth below.

NOW, THEREFORE, in consideration of the promises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, declare and agree as set forth below.

OPERATIVE PROVISIONS

1. Term. The initial term of this Agreement ("Term") will be for a period of three (3) years, unless earlier terminated as provided in Section 10 of this Agreement. The Term will automatically renew for an additional period of one (1) year upon each anniversary of the effective date of this Agreement, unless terminated as provided in Section 10 of this Agreement.

2. Property Owner's Obligation. Commencing on the effective date of this Agreement and continuing thereafter without abatement for the duration of the Term, Property Owner shall, at his sole cost and expense maintain the Landscape Areas consistent and in compliance with the City's Landscape Maintenance District Standards set forth in Exhibit B ("Landscape Maintenance Standards"). For the purpose of this Agreement, Landscape Maintenance Standards shall also include any reasonable written directions, instructions, or interpretations regarding the Landscape Maintenance Standards or maintenance of the Landscape Areas issued by City's Public Works Director or his/her designee. Property Owner's obligations include, but are not limited to, the removal of dead plants and vegetation, the replacement of new plants and materials consistent with the Landscape Maintenance Standards, repair and replacement of irrigation systems, and application of mulch, fertilizer, and pesticides consistent with the Landscape Maintenance Standards. Property Owner's obligations under this Section shall be at no cost to the City and City shall have no obligation to purchase or otherwise procure or provide any materials or services related to maintenance of the Landscape Areas or repair of any improvements therein.

3. Forbearance of Levy. City agrees, provided Property Owner is not in default of his obligations under this Agreement, to annually levy \$.00 through LMD 102 against the Property for each applicable assessment period during the Term of this Agreement.

4. Independent Contractor Status. This Agreement is not intended, and will not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between City and Property Owner. Property Owner is and will at all times remain a wholly independent contractor and not an officer or employee of City. Property Owner has no authority to bind City in any manner or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise. The personnel performing the services under this Agreement on behalf of Property Owner will at all times be under Property Owner's exclusive direction and control. Property Owner warrants that it will not at any time or in any manner represent that Property Owner or any of Property Owner's officers, employees, volunteers or agents are in any manner officials, officers, or employees of City. Neither Property Owner, nor any of Property Owner's officers, employees, volunteers or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Property Owner, and through it, its officers, employees, volunteers, and agents expressly waive any claim to any such rights or benefits.

5. Indemnification. Property Owner agrees to indemnify, defend, protect and hold harmless City from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively, "Claims"), which City may suffer or incur or to which City may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the negligent or willfully wrongful acts or omissions of Property Owner, its officers, employees, volunteers or agents committed in performing any services under this Agreement.

If any action or proceeding is brought against City by reason of any of the matters against which Property Owner has agreed to indemnify City as provided above, Property Owner, upon notice from City, must defend City at Property Owner's expense by

counsel acceptable to City, such acceptance not to be unreasonably withheld. City need not have first paid for any of the matters to which City is entitled to indemnification in order to be indemnified.

The insurance required to be maintained by Property Owner under this Agreement is intended to ensure Property Owner's obligations under this section, but the limits of such insurance do not limit the liability of Property Owner.

The provisions of this section do not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions.

6. Insurance. Property Owner must obtain and maintain at all times during the term of this Agreement comprehensive general liability insurance protecting Property Owner in amounts not less than \$1,000,000.00 for personal injury to any one person, \$3,000,000.00 for injuries arising out of any one occurrence, and \$300,000.00 for property damage. Such insurance must name the City, its officials, officers, employees, and agents as additional insured Parties and may not be cancelable nor may the coverage be reduced without at least 10 days prior written notice to City. Property Owner must also obtain and maintain at all times during the Term of this Agreement workers' compensation insurance as required by law. Property Owner must file and maintain on file with City at all times during the Term of this Agreement a copy or certificate of all such required insurance.

7. Compliance with Laws. Property Owner must conform to and abide by all applicable municipal, City, State and Federal laws, rules, regulations and ordinances, insofar as the same or any of them are applicable to Property Owner's performance of its obligations under this Agreement; and where permits and/or licenses are required for the performance by Property Owner of any of its obligations under this Agreement, the same must be first obtained from the regulatory agency having jurisdiction thereof.

8. Events of Default. The occurrence of any one of the following shall constitute an "Event of Default" under this Agreement:

A. If Property Owner fails to observe or perform any of the terms or provisions of this Agreement on its part or to be observed or performed, and does not cure any such failure within ten (10) calendar days (or such longer period as the City may authorize in writing) after receipt of notice from City specifying such failure; or

B. If Property Owner fails to maintain the Landscape Areas in compliance with and consistent with the Landscape Maintenance Standards set forth in Exhibit B of this Agreement, and does not cure any such failure within ten (10) calendar days (or such longer period as the City may authorize in writing) after receipt of notice from City specifying such failure; or

C. If City provides Property Owner with three (3) or more notices of default under this Section within any twelve (12) month period during the Term, a state of chronic Default ("Chronic Default") shall be deemed to exist (regardless of whether the Property Owner has timely cured the defaults).

9. Effect of Default. In the event Property Owner fails to timely cure an Event of Default, or a state of Chronic Default has been deemed to exist as set forth in Section

8 of this Agreement, then, without further notice to Property Owner, City may undertake any of the following remedies:

- A. Declare that this Agreement is Terminated.
- B. Reassume responsibility for maintenance of the Landscape Areas, reactivate LMD 102, and levy and collect the special assessment (up to the maximum amount permitted in the LMD 102 Engineer's Report filed with the City Clerk) against the Property for each applicable period.
- C. Seek to recover from Property Owner by any appropriate legal means any costs and expenses incurred by the City of restoring or repairing the Landscape Areas to a condition consistent with the Landscape Maintenance Standards that may not be levied against the Property as costs of LMD 102 or otherwise reimbursed to City by LMD 102. City shall be entitled to recover interest on such costs and expenses from the date of its demand for payment delivered to Property Owner at the legal rate.

Property Owner waives any and all rights to in any way challenge, including by bringing a claim, cause of action, or demand, (1) the resumption of assessments by LMD 102; (2) the amount of the special assessment levied against the Property by LMD 102 at any time subsequent to the Event of Default, and (3) the reasonable costs and expenses incurred by the City of restoring or repairing the Landscape Areas

10. Termination. Either Party may terminate this Agreement upon sixty (60) days written notice to the other Party. Upon the effective date of termination, maintenance responsibility for the Landscape Areas shall transfer to LMD 102 and the levy of all appropriate special assessments against Property Owner shall recommence.

11. Assignment. This Agreement may not be assigned by Property Owner, in whole or in part, without the prior written consent of City, which it may withhold or grant in its sole discretion. Any attempted or purported assignment in violation of this section will be deemed void and of no force and effect.

12. Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Property Owner of any of its obligations under this Agreement, whether of the same or similar type. The foregoing is true whether City's actions are intentional or unintentional.

13. Notices. Any notice required to be given under the terms of this Agreement or any law applicable thereto shall be in writing addressed to the recipient Party's notice address specified below and shall be deemed to have been effectively given: (1) if delivered by personal service, upon receipt (or if receipt is refused, upon attempted delivery); (2) if delivered by overnight commercial delivery service such as Fed Ex, upon receipt (or if receipt is refused, upon attempted delivery); or (3) if by certified mail, postage paid, return receipt requested, upon the date indicated in the return receipt. The notice addresses to be used by the Parties for any notice shall be as follows or shall be to such other addresses as the Parties may subsequently designate in writing:

CITY:

CITY OF HEMET
Attn: City Manager
445 E. Florida Avenue
Hemet, CA 92543

PROPERTY OWNER:

FADI MANSUR
4435 Torrance Blvd.
Torrance, CA 90503

14. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

15. Amendments. Any amendment to this Agreement will only be effective if in writing and signed by the Parties.

16. Attorneys' Fees. In the event any action shall be instituted between City and the Property Owner to enforce any provisions of this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs of action, including reasonable attorneys' fees as fixed by the court therein.

17. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. This Agreement shall be deemed made and entered into in Riverside County. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts located in the County of Riverside, State of California, or federal courts located in the Central District of California in Riverside.

18. Captions. The captions of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

20. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, or reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

21. Entire Agreement. This Agreement is governed by California law and constitutes the entire agreement between the Parties. All agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties with regard to the specific subject matter hereof are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to any other party with respect to the specific subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible

negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded by this Agreement. This is a fully integrated Agreement.

[Signatures to Follow on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF HEMET

By: _____
Christopher Lopez
City Manager

ATTEST:

Clay James, Deputy City Clerk

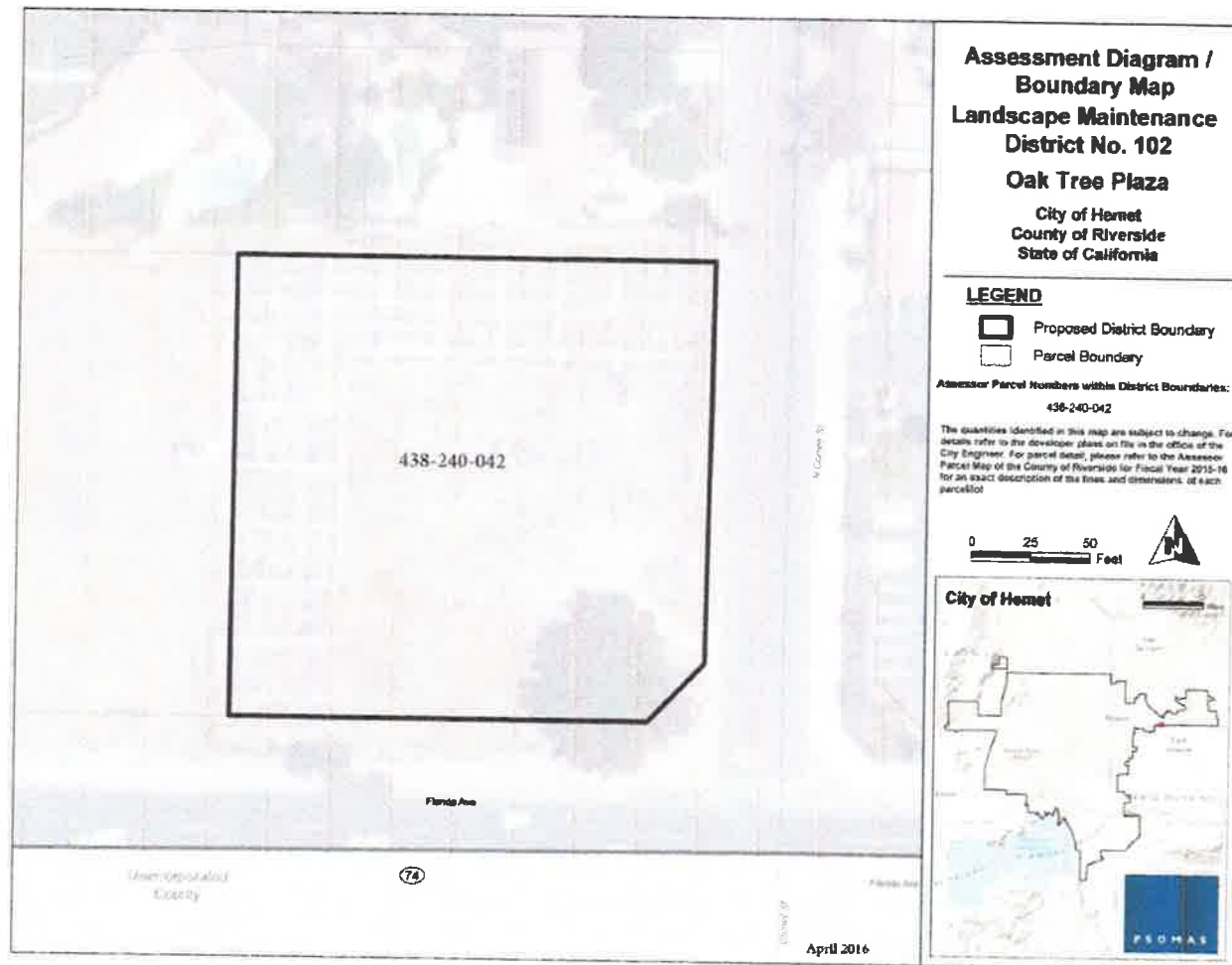
APPROVED AS TO FORM

Eric Vail, City Attorney

**Fadi Mansur, Property Owner
of APN 438-240-042-9**

By: _____


EXHIBIT A **LANDSCAPE AREAS**



A-1
LANDSCAPE MAINTENANCE SERVICES AGREEMENT: LMD 102 & CITY OF HEMET

EXHIBIT B

LANDSCAPE MAINTENANCE SERVICES AND STANDARDS

LANDSCAPE IMPROVEMENT MAINTENANCE

Landscape maintenance shall include trees, shrubs, ground cover, irrigation, hardscape and drainage structures. Maintenance includes the pruning of shrubs and up to 10' of trees, and routine pruning to maintain a neat appearance. Remove weeds that are not controlled by herbicides before size or abundance becomes a cause of complaint. Generally, weeds that exceed 3 inches to 5 inches in height or predominate a bare area are unacceptable.

Maintain all drainage structures to avoid obstruction at all times. Keep sidewalks and concrete areas free of obstructions, water, mud, algae or slime at all times. Keep adjacent plant material from encroaching public right-of-way.

IRRIGATION/WATER MANAGEMENT

All turf areas shall be irrigated as required to maintain adequate growth and pleasing appearance. Irrigation shall be accomplished in accordance with the following:

1. Planters & Greens should be irrigated between 10:00 p.m. - 6:00 a.m.
2. All systems shall be adjusted in order to:
 - a. Provide adequate coverage of all landscape areas;
 - b. Prevent excessive runoff and/ or erosion;
 - c. Prevent watering roadways, facilities such as walkways, fences, and private property;
 - d. Prevent saturated conditions;
 - e. Repair malfunctioning controllers, quick couplers, manual or automatic valves and sprinkler heads within twenty-four (24) hours of notification or self discovery; and
 - f. Where an automatic sprinkler system does not exist, Property Owner shall manually water all vegetation as required, supplying all hoses, nozzles, and sprinklers.

PESTICIDE USE SPECIFICATIONS - GENERAL

1. The City of Hemet solicits and encourages the use of effective alternative pest control measures.
2. Any pesticide applications are to be made by or under the supervision of a person holding a valid license, permit or certificate issued pursuant to Sections 11701 and following of said code, whichever may be required by applicable state or local law or regulation. Said person or company is to be currently registered to conduct a pest control business in the State of California and the County of Riverside.
3. Pesticide applications are to be made in strict compliance with the label directions, restrictions, and precautions as well as with any other requirements deemed necessary by any county, state or federal regulatory agency, or Public Works Department of the City of Hemet.

WEED & PEST CONTROL - GREENS AND PLANTERS

1. Ground covers, shrubs, and trees under 18 feet.

- a. Weed Control - All shrub and ground cover areas shall be treated with an appropriate pre-emergent herbicide at the maximum allowable rate according to the label and state regulations.
 - b. Snail Control - Shall be controlled on an as-needed basis on all plant material.
- 2. Turf
 - a. Weed Control
 - i. An appropriate herbicide shall be applied in accordance with all label specifications. In all areas prone to weed grass intrusion, annual applications of pre-emergent herbicides labeled for use shall be required. Check schedule.
 - b. Insect and Disease Control
 - i. All other insect, disease, and fungus problems will be treated on a site and need-specific basis with the knowledge and consent of the City.
 - c. Rodent Control
 - i. Property Owner shall be responsible for the eradication and control of all rodents, as necessary, on a continual basis.

TREE/PLANTER MAINTENANCE

1. The Property Owner is responsible for maintaining trees that require support. Two stakes and two ties will be utilized for the purpose of support. The stakes shall be placed at right angles to the prevailing wind. Ties shall be rubber and placed in a figure eight secured to the stakes.
2. The Property Owner is responsible for the removal of stakes that are no longer required for the support of trees.
3. The Property Owner is responsible for keeping trees lifted to a height of no less than ten feet from ground level. Trees and shrubs shall be kept from encroaching on sidewalks and where traffic is evident.
4. The Property Owner is responsible for the removal of limbs and debris that fall as a result of high wind.
5. Planters shall never be allowed to compact as to allow for vigorous plant growth and limit the amount of irrigation run-off.
6. All shrubbery shall be pruned quarterly, or as needed, to encourage healthy growth habits, shape and appearance.
7. Ivy will be kept a distance of twelve inches from all wood stock material such as trees and shrubs, and will be kept off walls.
8. Plant material that dies due to negligence of the Property Owner in the control of insects, pests, weeds, rodents and disease; or due to improper irrigation, fertilizing or lack of proper maintenance and care shall be replaced at the sole expense of the Property Owner.

TURFGRASS - GREENS

***SEE ANNUAL MAINTENANCE SCHEDULE ***

Watering- A regular, deep watering program shall be accomplished to give the best results. The established turf should not be kept moist but should dry out somewhat between waterings. Allow turf to dry out before mowing.

Aeration- Mechanically aerate all turf areas as often as required to reduce compaction/stress conditions, which will offer greater water penetration and reduce runoff. In those areas where soil condition is poor, top dress may be required by the City.

Mowing - Mow and edge greens weekly. Cut cool season turf grass 2 1/2" during warm season and reduce to 2" during winter or cooler seasons.

Trimming and Edging- Trim around trees, walls, buildings, curb, header boards, valve boxes, quick couplers, and paved areas on a weekly basis to present a neat, clean appearance. Chemicals will be allowed for this purpose, only with written approval from the City.

Dethatching- Dethatch all turf areas once per year at a time when there will be the least amount of stress to turf, preferably spring or fall.

Fertilization - Apply fertilizer so as to provide sufficient nitrogen and other basic nutrients on a regular basis to maintain a deep green color and keep turf in a healthy looking condition. Property Owner shall notify the City Representative 48 hours prior to commencing fertilization.

Weed Control

Property Owner shall maintain a turf free of weed infestations at all times by either chemical or mechanical means. Pre-emergent herbicide applications shall be required to control crabgrass in all turf areas. The Property Owner shall be especially careful if applying chemicals to control weeds because of possible damage to the lawn. Before such applications are made, the turf should be well established and in a vigorous condition. All chemicals applied shall be recorded and coordinated with the City.

Hard Surface Areas

These areas shall include concrete sidewalks, A.C. walkways, parking lots and gutters. All areas shall be swept weekly to remove all deposits of silt and/or sand and glass. Property Owner shall be responsible for controlling and removing, by mechanical or chemical means, weeds growing in sidewalk, curb and gutter cracks or expansion joints, and areas contiguous to the City landscape.

1. All sidewalks within the district areas shall be cleaned daily, if necessary, to remove any glass or heavy debris.
2. All sidewalk areas abutting maintained areas shall be cleaned when dirtied by Property Owner's operations and at other times as required.

Tree Pruning- All trees shall be properly pruned with the spacing, balance and attachment of limbs evaluated prior to pruning. All pruning cuts should be made to promote upright growth and minimize future branching that may impede vehicular or pedestrian traffic, or for structural stability or appearance. Properly pruned shall mean:

1. Prune only what needs to be pruned. No more than 25 percent of the live wood may be removed.
2. All broken or otherwise damaged limbs shall be removed.
3. All dead limbs or portions thereof shall be removed.
4. All limbs less than two (2) feet from the ground shall be removed, unless doing such would cause irreparable damage or leave the tree unbalanced.
5. All pruning cuts shall be made at the branch collar.

6. The primary terminal bud shall not be removed.
7. Any trees improperly pruned will be subject to removal by the Property Owner and replaced by Property the Owner at no additional cost to the City.

MATERIAL REPLACEMENT POLICY

All new plant material and irrigation installations or repairs shall be at the sole cost of the Owner including damage or death of plant material due to wind or storm, or vandalism, theft, or other willful acts over which the maintenance Owner has no control. Existing plants shall be replaced by Owner if they die due to Owner's negligence.

Shrub replacement shall be in kind with vigorous, normal growth, and free from disease, weeds and insects. All replacement materials are to be with original types and model materials, unless a substitute is approved by the City representative. All materials are to be new and identical to existing materials, unless otherwise approved by City Representative.

CITY OF HEMET ANNUAL MAINTENANCE SCHEDULE

Service	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Turf Maintenance												
Apply Pre-emerge herbicide to turf	X					X						
Apply Post-emerge herbicide to turf	*** CONTINUE AS NEEDED ***											
Fertilize greens		X		X			X			X		
Aerate with gypsum			X								X	
Aerate groom			X						X			
Dethatch groom			X									
Other Maintenance												
Irrigation Inspections	W	W	W	W	W	W	W	W	W	W	W	W
Mowing	W	W	W	W	W	W	W	W	W	W	W	W
Thorough cleaning of sidewalks in all districts	W	W	W	W	W	W	W	W	W	W	W	W
Trimming and edging	W	W	W	W	W	W	W	W	W	W	W	W
Tree Trimming	AS NEEDED											
Shrub Trimming	QUARTERLY AND/OR AS NEEDED											

Legend:

W = Maintenance to be provided weekly.

X = Maintenance to be provided once within this time frame.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA

COUNTY OF Los Angeles

On February 12th, 2020, before me, Alex Lira, Notary Public,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared FADI MANSUR,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: FADI MANSUR

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ Attorney-In-Fact ☐ General
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

LANDSCAPE MAINTENANCE
SERVICES AGREEMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above



City Council Staff Report

Agenda # 8.D

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Christopher Lopez, City Manager
Lorena Rocha, Finance Director

DATE: March 24, 2020

RE: A **Resolution** Approving the Second Amendment to the Service Agreement between the City of Hemet and The Pun Group, LLC. Increasing the Original Contract Pricing Term of Agreement to a Total of \$246,000 and Authorizing the City Manager to Execute the Second Amendment to the Agreement with The Pun Group, LLC.

RECOMMENDED ACTION:

Adopt a Resolution Approving the second amendment to the service agreement between the City of Hemet and The Pun Group, LLC. increasing the original contract pricing term of agreement to a total of \$246,000 and authorizing the city manager to execute the second amendment to the agreement with The Pun Group, LLC.

BACKGROUND:

On November 12, 2015, the City entered into an Agreement for Services with The Pun Group, LLC. for citywide financial auditing services. Within the initial agreement, services would be provided for three (3) years with an option to extend for fiscal year 18/19 audit and fiscal year 19/20 audit.

On June 14, 2016 the City executed the First Amendment for Services with The Pun Group to cover the financial audit of fiscal year 18/19. Based on our existing relationship and the Pun Group's professional expertise and ability to demonstrate the City's needs, it is recommended that the Council extend the Second Amendment for Services with The Pun Group to complete the financial audit of fiscal year 19/20.

The City will seek a formal Request for Proposal (RFP) for citywide audit services to commence with the fiscal year 20/21.

FISCAL IMPACT:

Funds are budgeted annually for citywide audit services in the Finance Department budget, account number 100-1400-2710.

ATTACHMENT(S):

1. Resolution
2. Exhibit A to Resolution – Second Amendment to Agreement for Services

Respectfully Submitted,

Lorena Rocha
Finance Director



**CITY OF HEMET
Hemet, California
RESOLUTION NO. 2020-XXX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE SERVICE AGREEMENT BETWEEN THE CITY OF HEMET AND THE PUN GROUP, LLC. INCREASING THE ORIGINAL CONTRACT PRICING TERM OF AGREEMENT TO A TOTAL OF \$246,000 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE AGREEMENT WITH THE PUN GROUP, LLC.

WHEREAS, on November 12, 2015, the Hemet City Council entered into an Agreement of Services with the Pun Group, LLC. for a term of three (3) years with an option to extend for fiscal year 18/19 and fiscal year 19/20; and

WHEREAS, on June 14, 2016 the Hemet City Council executed the First Amendment for Services with the Pun Group, LLC to cover the financial audit for fiscal year 18/19.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES HEREBY FIND AND RESOLVE:

SECTION 1. Incorporation of Recitals. The City Council of the City of Hemet finds and determines that the above referenced recitals are true and correct and material to the Resolution.

SECTION 2. City Council Action. The City Council hereby takes the following actions:

a) Approve the Second Amendment to the Service Agreement between the City of Hemet and the Pun Group, LLC, incorporated herewith as Exhibit A, and increase the original contract pricing term of the agreement to a total of \$246,000.

b) Authorize the City Manager to execute the second amendment to the agreement with The Pun Group, LLC. and associated purchase order documents.

PASSED, APPROVED AND ADOPTED this 24th day of March 2020.

Russ Brown, Mayor

ATTEST:

Clay James, Deputy City Clerk

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State of California)
County of Riverside)
City of Hemet)

I, Clay James, Deputy City Clerk of the City of Hemet, do hereby certify that
the foregoing resolution was adopted by the Hemet City Council on the 24th day of
March, 2020, and was passed by the following vote:

AYES:	Council Members:
NOES:	Council Member:
ABSTAIN:	Council Member:
ABSENT:	Council Member:

Clay James, Deputy City Clerk

EXHIBIT A
Second Amendment to Agreement for Services with The Pun Group, LLC

**SECOND AMENDMENT TO
AGREEMENT FOR SERVICES**

by and between

the

CITY OF HEMET

and

**THE PUN GROUP LLP,
a limited liability partnership**

Dated March 24, 2020

SECOND AMENDMENT TO AGREEMENT FOR SERVICES

This Second Amendment to Agreement for Services (“Second Amendment”), which is dated for reference as indicated on the cover page, is hereby entered into by and between the CITY OF HEMET, a California municipal corporation (“City”), and The Pun Group LLP, a limited liability partnership (“Service Provider”), as follows:

RECITALS

- A. City and Service Provider entered into an Agreement for Services on November 12, 2015 and amended the Agreement on June 14, 2016 (“Agreement”). The Agreement provides that Contractor will provide annual financial auditing services (“Services”) for the City of Hemet through fiscal year 2018/19.
- B. This Second Amendment amends Section 1 “Term of the Agreement” extending the Term of this Agreement for an additional financial audit year for fiscal year 2019/20.
- C. Section 4 “Compensation and Method of Payment” and Exhibit B “Compensation” of the Agreement established compensation not to exceed \$38,500.
- D. The First Amendment dated June 14, 2016, amended section 4 “Compensation and Method of Payment” and Exhibit B “Compensation” to add additional compensation, including reimbursement for actual expenses, totaling a new not exceed amount of One Hundred Thirty-Seven Thousand Dollars (\$137,000).
- E. This Second Amendment amends Section 4 “Compensation and Method of Payment” and Exhibit B “Compensation” to provide that the Total Compensation for Services, including reimbursement for actual expenses, shall not exceed Two Hundred Forty-Six Thousand Dollars (\$246,000).
- F. Exhibit B (2) of the Agreement “Compensation” provides that Services shall not exceed \$137,000.
- G. This Second Amendment amends Exhibit B (2) to provide that Services shall not exceed \$246,000.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the promises made and recited herein, the Parties do hereby enter into this Second Amendment which modifies and amends the Agreement as follows:

1. **AMENDMENT.** The Agreement is hereby modified and amended as follows:

- 1.1 **Term of the Agreement.** Section 1 of the Agreement is hereby amended as follows:

“Subject to the provisions of Section 20 “Termination of Agreement” of this Agreement, the Term of this Agreement is for three (3) financial audit years

starting with fiscal year 14/15, with three optional one-year extensions for fiscal year's 17/18, 18/19 and 19/20. The City holds the right to exercise the options to extend for additional Service years.

1.2 Compensation and Method of Payment. Section 4(a) of the Agreement is hereby amended as follows:

“Subject to any limitations set forth in this Agreement, City agrees to pay Service Provider the amounts specified in Exhibit “B” Compensation” and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Two Hundred Forty-Six Thousand dollars (\$246,000), unless additional compensation is approved in writing in accordance with Section 26 “Administration and Implementation” or Section 28 “Amendment” of this Agreement.

1.4 Exhibit B Compensation. Exhibit B (2) of the Agreement is hereby amended as follows:

“The total compensation for the Services shall not exceed \$246,000, as provided in Section 4 “Compensation and Method of Payment” of this Agreement.

2. GENERAL PROVISIONS.

2.1 Remainder Unchanged. Except as specifically modified and amended in this Second Amendment, the Agreement remains in full force and effect and binding upon the Parties.

2.2 Integration. This Second Amendment consists of pages 1 through 3 inclusive, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the transaction discussed in this Second Amendment.

2.3 Effective Date. This Second Amendment shall not become effective until the date it has been formally approved by the City Council of the City of Hemet and executed by the appropriate authorities of the City and Service Provider.

2.4 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Second Amendment.

2.5 References. All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this Second Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this Second Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment to the Agreement on the date and year first written above.

CITY:

CITY OF HEMET

By: _____
Christopher R. Lopez, City Manager

ATTEST:

Clay James, Deputy City Clerk

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

SERVICE PROVIDER:

THE PUN GROUP LLP

By: _____
Its: _____
Title: _____

By: _____
Its: _____
Title: _____

NOTE: SERVICE PROVIDER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO SERVICE PROVIDER'S BUSINESS ENTITY.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

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ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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CAPACIT(IES) CLAIMED BY SIGNER(S)

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☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above



City Council Staff Report

Agenda # 9.A

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Christopher R. Lopez, City Manager
Steve R. Loriso, City Engineer

DATE: March 24, 2020

RE: An **Ordinance** Amending Section 70-224 of Article VIII (Security Improvements) of Chapter 70 (Subdivisions) of the Hemet Municipal Code Relating to the City's Acceptance of Lien Agreements as Securities for Subdivision Improvement Agreements.

RECOMMENDED ACTION:

It is respectfully recommended that the City Council:

1. Conduct a public hearing on the proposed Ordinance; and
2. Introduce an Ordinance amending section 70-224 of article VIII (Security Improvements) of Chapter 70 (Subdivisions) of the Hemet Municipal Code relating to the City's acceptance of lien agreements as securities for subdivision improvement agreements

BACKGROUND:

Prior to subdivision maps being approved and recorded, Subdividers must enter into Subdivision Improvement Agreements ("SIAs") with the City to guarantee the construction/installation of the required public improvements (streets, sewers, water infrastructure, storm drains, etc.). The Subdivision Map Act, Government Code Section 66410 et seq. ("Map Act"), further requires such SIAs be secured with certain types of securities acceptable to the City. The Hemet Municipal Code ("Code") currently requires subdividers to enter into subdivision improvement agreements and post securities (bonds, letters of credit, or cash deposits) in order to secure SIAs prior to subdivision map recording.

ANALYSIS:

Despite some recovery from the Recession of 2008, subdividers are still experiencing difficulty obtaining surety bonds, stalling development for an indeterminate period of time. While allowing acceptance of Lien Agreements as security for new maps presents

some risks to the City (possible foreclosures, fluctuating land values, and proliferation of delayed development projects); staff believes the proposed Ordinance adequately mitigates such risks as discussed below.

Section 66499(a)(4) of the Map Act identifies Lien Agreements as acceptable security if the City Council finds that, "it would not be in the public interest to require the installation of required improvements sooner than two years after the recordation of the map." Map Act Section 66499(b) imposes additional requirements on the acceptance of Lien Agreements, all of which are incorporated into the proposed Ordinance. These requirements include, but are not limited to:

- Lien agreements be recorded concurrently with the SIA and the map;
- Have the priority of a judgment lien in favor of the City; and
- Be appropriately indexed in the County Recorder's Grantor/Grantee index.

In addition to the Map Act and other requirements, the proposed Ordinance would further permit the City to accept Lien Agreements only if:

- The City Engineer determines the estimated costs to construct the public improvements do not exceed the fair market value of the real property against which the Lien Agreement is to be recorded, based on an appraisal conducted by an independent, licensed real estate appraiser not more than sixty days prior to the date any Lien Agreement is entered; and
- The property subject to the lien is not encumbered by other liens, mortgages or deeds of trusts.

Subdividers must also pay a processing fee to cover the City's costs of preparing and processing Lien Agreements and provide a cash deposit per tract map to cover the costs of reverting the property to acreage (undoing the subdivision map) should the Subdivider default under the Lien Agreement.

To ensure that new development does not stall for inordinate amounts of time, the initial length of Lien Agreements will be three years, with one additional three-year extension available if certain requirements are met. In other words, Lien Agreements will require that the construction of public improvements commence no less than three years (and in event of an extension, no more than a total of six years) following the date the map is approved. More importantly, in order to receive permits and commence construction, Subdividers must first post surety bonds, letters of credit and/or cash deposits with the City in place of the Lien Agreement.

COORDINATION AND PUBLIC REVIEW:

The proposed ordinance was reviewed and recommended by the City Engineer and City Attorney's office. Pursuant to California Government Code Section 6066, the City is required to set a noticed public hearing for the ordinance after the first reading, and make the ordinance available for public review for a minimum of two weeks prior to adoption of the ordinance at second reading. The public hearing was noticed in the Press Enterprise 10-days prior to this meeting.

FISCAL IMPACT:

The adoption of this ordinance has no General Fund impact.

ATTACHMENT(S):

1. Ordinance
2. Attachment 1 – Lien Agreement

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SLR', with a long horizontal flourish extending to the right.

Steve R. Loriso
City Engineer



I

**CITY OF HEMET
Hemet, California**

ORDINANCE NO. 2020-XXX

**AN ORDINANCE OF THE CITY COUNCIL OF CITY OF
HEMET, CALIFORNIA AMENDING SECTION 70-224 OF
ARTICLE VIII (SECURITY IMPROVEMENTS) OF CHAPTER
70 (SUBDIVISIONS) OF THE HEMET MUNICIPAL CODE
RELATING TO THE CITY'S ACCEPTANCE OF LIEN
AGREEMENTS AS SECURITIES FOR SUBDIVISION
IMPROVEMENT AGREEMENTS.**

WHEREAS, the Subdivision Map Act, California Government Code Section 66410 et seq. (the "Act"), gives the authority to Cities to adopt Ordinances permitting lien agreements in lieu of other forms of security based upon a finding that it would not be in the public interest to require the installation of the required improvements sooner than two years after the recordation of a subdivision map; and

WHEREAS, in order for subdividers to record subdivision maps prior to completing the public improvements required by such maps and the conditions of approval imposed by the City, the Hemet Municipal Code ("Code") currently requires subdividers to enter into subdivision improvement agreements and post securities (bonds, letters of credit, or cash deposits, but not lien agreements); and

WHEREAS, despite some recovery from the Recession of 2008, subdividers are still experiencing difficulty obtaining surety bonds, stalling development for an indeterminate period of time; and

WHEREAS, many other municipalities have considered and implemented an alternative to the posting of traditional securities as allowed by the Act; and

WHEREAS, revisions proposed by this Ordinance would permit the City to accept lien agreements in lieu of traditional securities only when the City determines it is in the public interest not to require the public improvements secured thereby to be completed sooner than two (2) years after the recordation of the map and where the property secured

1 by the lien is at least equal in value to the cost of the public improvements to be installed;
2 and

3 **WHEREAS**, the revisions of this Ordinance further only permit such Lien
4 Agreements to remain in place initially for a period of three (3) years (and an additional
5 three (3) year period if certain requirements are met) to ensure that the public and other
6 improvements are constructed by a date certain.

7 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET,**
8 **CALIFORNIA (“CITY”) ORDAINS AS FOLLOWS:**

9 **SECTION 1: AMENDMENT OF CHAPTER 70, ARTICLE VIII, SECTION 70-224**
10 **OF THE HEMET MUNICIPAL CODE.**

11 Chapter 70, Article VIII, Section 70-224 of the Hemet Municipal Code is hereby
12 amended in its entirety as shown in Exhibit “A”.

13 **SECTION 2: CEQA**

14 The adoption of this Ordinance is not subject to the California Environmental Quality
15 Act (“CEQA”), pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines
16 (California Code of Regulations, Title 14, Chapter 3) because the Ordinance relates to
17 implementation of provisions of the Subdivision Map Act and is not a project as defined in
18 Section 15378 of the CEQA Guidelines and will not result in a direct or reasonably
19 foreseeable indirect physical change to the environment.

20 **SECTION 3: SEVERABILITY**

21 If any one or more of the terms, provisions or sections of this Ordinance shall to
22 any extent be judged invalid, unenforceable and/or voidable for any reason whatsoever
23 by a court of competent jurisdiction, then each and all of the remaining terms, provisions
24 and sections of this Ordinance shall not be affected thereby and shall be valid and
25 enforceable.

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SECTION 4: EFFECTIVE DATE

This Ordinance shall take effect thirty days after it is adopted.

INTRODUCED at the regular meeting of Hemet City Council on January 28, 2020

APPROVED AND ADOPTED this 24th day of March 2020, by the following vote:

Russ Brown, Mayor

ATTEST:

APPROVED AS TO FORM:

Clay James, Deputy City Clerk

Eric S. Vail, City Attorney

1 State of California)
2 County of Riverside)
3 City of Hemet)

4 I, Clay James, Deputy City Clerk of the City of Hemet, do hereby certify that the
5 foregoing Ordinance was introduced and first read on the 28th day of January 2020, and
6 had its second reading at the regular meeting of the Hemet City Council on the 24th day
7 of March, 2020, and was passed by the following vote:

8
9 **AYES:**

10 **NOES:**

11 **ABSTAIN:**

12 **ABSENT:**

13
14 _____
15 Clay James, Deputy City Clerk
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EXHIBIT A

Section 70-224 Lien Agreements as Security

- (a) The subdivider/property owner ("subdivider") may, in lieu of posting a security described in Section 70-221 of this Article, enter into an agreement with the city to construct in the future the public portions of the subdivision improvements required by the map conditions of approval and/or Section 70-223 of this Article, as determined by the city engineer, including, but not limited to: master planned or "missing link" streets, drainage and sewer improvements, community facilities, offsite improvements, fire access, fire flow and traffic signals (hereinafter "required improvements") and securing such performance by granting the city a lien on the real property to be divided. Such agreements shall be known as "lien agreements." The use of lien agreements shall only be allowed if all requirements in Section 70-224 of this Article are satisfied.
- (b) Government Code Section 66499(a)(4) authorizes the City to enter into lien agreements if the City Council finds that it would not be in the public interest to require the installation of the required improvements sooner than two years after the recordation of the map.
- (c) Where the City Council finds it would not be in the public interest to require the installation of the required improvements sooner than two years after recordation of the map, the subdivider may execute a lien agreement with the City at the time the subdivider enters into the improvement agreement specified in Section 70-221 ("subdivision improvement agreements and security therefore").
- (d) At the sole discretion of the City, a lien agreement may be used to substitute an existing security furnished under Section 70-223 for required improvements under a previously-executed subdivision improvement agreement, if: (i) no activity for the subdivision has transpired; (ii) no inspections have occurred; (iii) no permits for construction of improvements have been issued within one year of the recordation of the subdivision map; and (iv) upon a finding by the city council that it would not be in the public interest to require the installation of the required improvements sooner than two years after the recordation of the map.
- (1) The city will not accept a lien agreement from any subdivider, either at the time of execution of the subdivision improvement agreement, or as a substitute for existing security, if: (i) any individual lots have been sold; (ii) any construction permits, including but not limited to any grading or building permits, have been issued on any of the property; or (iii) construction of any of the required improvements has begun.
- (2) Notwithstanding the provisions of Subdivision 70-224(d)(1), the City may accept a lien agreement from a subdivider as a substitute for an existing security if grading has commenced on the land divided, so long as the grading is in strict accordance with a valid grading permit and all the following conditions are met:
- (A) There is no need for the City to construct the required improvements if the subdivider's project is abandoned or delayed for any period of time;

- 1 (B) The grading has no effect on the use, operation and maintenance of
2 existing streets or highways, public or private;
- 3 (C) The grading has not caused the modification or closure of any public
4 access points, existing streets or highways, public or private;
- 5 (D) Additional drainage improvements and/or erosion controls are not
6 necessary and/or installed in the road right-of-way due to the grading;
- 7 (E) Delay of the construction of the subdivider's required improvements
8 do not affect or delay the improvements of an adjacent subdivider
9 who has already commenced work on his/her/its required
10 improvements;
- 11 (F) The completion of any public improvements are not required by the
12 City's general plan circulation element, master plan of drainage,
13 master sewer plan or master water plan or for any other reason for
14 the purposes of preserving public health, safety or welfare;
- 15 (G) The subdivider provides a separate security, a deposit either with the
16 City or a responsible escrow agent or trust company approved by the
17 City of cash or negotiable bonds of the kind approved for securing
18 deposits of its public moneys, for the maintenance of the graded land,
19 including without limitation, dust control, erosion control, fencing, and
20 any other maintenance as required by the City; and
- 21 (H) In the case that any individual lots have been sold, at the discretion
22 of the City and only after the City has performed a comprehensive
23 review of the development (which may include approval of a
24 construction phasing plan); completion of required improvements to
25 serve the individual lots as determined by the city engineer; and other
26 requirements and conditions to be met prior to acceptance of the lien
27 agreement.
- 28 (3) Lien agreements used to substitute for existing security shall be recorded
against all lots that have not passed a final inspection and for which all
required associated improvements, as determined by the city engineer, have
not been completed ("undeveloped lots"). Such lien agreements shall also
meet all of the requirements set forth in Sections 70-224(e) through 70-
224(l), below.
- (e) Lien agreements, including those used to substitute for existing security under 70-
224(d), above, shall:
- (1) Be allowed only where the subdivider provides a title insurance policy and
title report from a title company approved by the city documenting that: (i) the
subdivider is the record owner of the entire property to be subdivided (or in
the case of a substitute security, documenting that the subdivider is the
record owner of all undeveloped lots) against which the lien agreement is to
be recorded; and (ii) such aforementioned property is not encumbered by
any mortgages, deeds of trust, or liens. The title insurance policy and title
report shall be issued forty-five days prior to the execution of the lien
agreement.
- (2) Be in a form acceptable to and approved by the City Council, the city

- 1 attorney, and the City's risk manager.
- 2 (3) Be executed by the mayor on behalf of the City, and by all current record
3 owner(s) of the property to be divided (or in the case of a substitute security,
4 all owners of the undeveloped lots), as evidenced by the title insurance
5 policy and report specified in 70-224(e)(1), above.
- 6 (4) Be used only to secure future improvements that would be required for any
7 final map and/or when a subdivider would be required by Article VIII to
8 construct, or agree to construct, the required improvements for a
9 subdivision.
- 10 (5) Contain a detailed itemization of the required improvements (or in the case
11 of a substitute security, any remaining required improvements) and an
12 engineer's estimate of costs to construct same, as approved by the city
13 engineer, and specify that the subdivider's obligation, and that of
14 subdivider's successors in interest, extends to the actual cost of construction
15 of the aforementioned improvements if such costs exceed the estimate.
- 16 (6) Be allowed if the city engineer determines the estimated costs to construct
17 the required improvements (or in the case of substitute security, the
18 remaining required improvements) do not exceed the fair market value of
19 the real property against which the lien agreement is to be recorded, based
20 on an appraisal conducted by an independent, licensed real estate appraiser
21 not more than sixty days prior to the date any lien agreement is entered.
22 Subdivider shall furnish such appraisal to the city at least forty-five days prior
23 to the date any lien agreement is entered.
- 24 (7) Contain a legal description of the entire real property against which the lien
25 agreement is being recorded as security for the required improvements (or
26 in the case of substitute security, as security for the remaining required
27 improvements).
- 28 (8) Be recorded with the Riverside County Recorder against the entire property
to be divided by the map (or in the case of substitute security, against all
undeveloped lots). The recorded lien agreement shall be indexed in the
grantor index to the names of all record owners of the real property as
specified on the map and/or in 70-224(e)(1) above, and in the grantee index
to the city.
- (9) Be approved concurrently with the approval of the final map and the
subdivision improvement agreement executed by subdivider, with a note of
the lien agreement's existence placed on the map, except where the lien
agreement is being used as substitute security after final map approval
under 70-224(d) above, in which case the lien agreement shall be signed
and acknowledged by all parties having any record title interest in the
property against which the lien agreement is being recorded, as prescribed
by Government Code section 66436, consenting to the subordination of their
interests to the lien agreement.
- (10) Require the subdivider to pay an application fee to the city for the processing
of the lien agreement in an amount established and revised from time-to-
time by resolution of the City Council and included in a schedule of fees.
- (f) From the time of recordation of the lien agreement, a lien shall attach to the real

property described therein and shall have the priority of a judgment lien in an amount necessary to complete the required improvements (or in the case of substitute security, the remaining required improvements) and under no circumstances shall the city be obligated to agree to subordinate the lien.

(g) The lien agreement shall provide that:

(1) The subdivider must deliver acceptable replacement security to the city in the types and amounts specified in Section 70-221 of this chapter and approved by the city council in place of the lien agreement and commence construction of the required improvements and any other improvements imposed as map conditions of approval (hereinafter "other improvements") within three (3) years following recordation of the map; or

(2) In the case of a substitute security, the subdivider must deliver acceptable replacement security to the city (in the types and amounts specified in Section 70-221 of this chapter and approved by the city council) in place of the lien agreement and commence construction of the remaining required improvements and other improvements within three (3) years following recordation of the lien agreement; and

(3) Once the lien agreement is recorded, the city shall not issue any development or construction permits for the property subject to the lien agreement until the aforementioned delivery of acceptable replacement security to the city has occurred.

(h) The time for delivery of acceptable replacement security to the city and commencement of construction as specified in Sections 70-224(g)(1) and (2) above, may be extended once for an additional three (3) year period as approved by the city engineer or his or her designee. A lien agreement may therefore only be in effect for a total of six (6) years. In order to receive an extension of time under this Subsection (h), both of the following conditions must be met:

(1) The subdivider shall provide a title insurance policy and title report from a title company approved by the City documenting that: (i) the subdivider is the record owner of the entire subdivided property against which the lien agreement is currently recorded as security (or in the case of a substitute security, documenting that the subdivider is the record owner of all undeveloped lots against which the lien agreement has been recorded); and (ii) such subdivided property or undeveloped lots are not encumbered by any mortgages, deeds of trust, or liens. The title insurance policy and title report shall be issued forty-five days prior to the date the extension of time is requested; and

(2) The city engineer determines that the estimated costs for the required improvements (or in the case of substitute security, the remaining required improvements) do not exceed the fair market value of the real property against which the lien agreement is recorded, based on an appraisal conducted by an independent, licensed real estate appraiser not more than sixty days prior to the date an extension of time is requested. Subdivider shall furnish such appraisal to the city at least forty-five days prior to the date the extension of time is requested.

(i) The lien agreement shall specify that no individual lots shall be sold while the lien agreement is in effect. However, fee title to the entire property encumbered by the

1 lien agreement or to all lots designated on any individual final map which is
2 encumbered by the lien agreement, may be sold in the aggregate to a single
3 purchaser, provided that the proposed purchaser must, prior to or concurrent with
4 assuming title to the property, either;

5 (1) Execute a new lien agreement in a form acceptable to the city which will
6 encumber the property to be conveyed, specifying the respective obligations
7 of the owners of the property subject to the original and new lien agreement.

8 (2) Deliver acceptable replacement security to the City as set forth in
9 Section 70-221 as a condition to development of the property conveyed.

10 (j) The subdivider shall also be required to provide to the city a cash deposit per
11 recorded subdivision tract map in an amount established and revised from time-to-
12 time by resolution of the city council and included in a schedule of fees, regardless
13 of whether the project was subdivided by a single tract map or by multiple tract map
14 recordings through phasing, for the purpose of reverting the property to acreage if
15 the subdivider breaches or is in default of the terms of the lien agreement.
16 Reversion to acreage and the cash deposit by reason of default or breach of the
17 lien agreement shall only be applicable to properties where none of the required
18 improvements for which securities were provided have been installed and/or have
19 been constructed. Any unused portion of the cash deposit shall be refunded to the
20 subdivider who made such cash deposit, following completion of the reversion to
21 acreage. If the cost of the reversion to acreage exceeds the amount deposited per
22 recorded subdivision tract map, the subdivider shall pay such additional costs to
23 the City prior to recordation of the reversion to acreage map.

24 (k) The lien agreement shall only be released: (i) upon delivery to the City of acceptable
25 replacement security for such lien agreement prior to construction and issuance of
26 permits as set forth in 70-224(g) above; (ii) to facilitate a sale as specified in 70-
27 224(i) above; or (iii) upon recordation of a reversion to acreage map.

28 (l) Under no circumstances shall any lien agreement compel the City to construct the
required improvements, any remaining required improvements and/or other
improvements.

PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

CITY OF HEMET

AND WHEN RECORDED MAIL TO:

City Engineer
City of Hemet
445 E. Florida Avenue
Hemet, CA 92543

Space above this line for recorder's use only
EXEMPT FROM RECORDER FEES PURSUANT TO GOV. CODE § 27383, 27388.1(2)(D)

LIEN AGREEMENT

As Subdivision Improvement Security for Tract Map No. #####

Title of Document

TRA: _____

DTT: _____

Exemption reason declared pursuant to Government Code 27388.1

- ☐ This document is a transfer that is subject to the imposition of documentary transfer tax.
- ☐ This is a document recorded in connection with a transfer that is subject to the imposition of documentary transfer tax.
Document reference: _____
- ☐ This document is a transfer of real property that is a residential dwelling to an owner-occupier.
- ☐ This is a document recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier.
Document reference _____

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

LIEN AGREEMENT

THIS LIEN AGREEMENT ("Lien Agreement") is entered into this _____ day of _____ 20____, by and among the City of Hemet, a municipal corporation and California general law city (hereinafter "CITY") and _____ (hereinafter "OWNER"). CITY and OWNER are collectively referred to hereinafter as the "PARTIES," and individually as a "PARTY".

RECITALS

- A. OWNER is the record fee owner of that certain real property situated in the City of Hemet, County of Riverside, State of California, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference. Said real property is hereinafter referred to as the "Property."
- B. Tract Map No. _____ (hereinafter "Subdivision"), was recorded in the office of the County Recorder of Riverside County, for the subdivision of real property within the CITY, evidenced by County Recorder's Document No. _____, pursuant to the Subdivision Map Act (Gov. Code Section 66410 et seq.) and Chapter 70, Section 70-224 of the Hemet Municipal Code ("HMC") (hereinafter "Chapter 70").
- C. A secured Subdivision Improvement Agreement with the CITY dated _____ to perform certain acts and construct certain improvements as a condition of CITY's approval of said Subdivision has been executed and recorded, evidenced by Riverside County Recorder's Document No. _____.
- D. The Subdivision Improvement Agreement, HMC Chapter 70 and Sections 66462 and 66469 of the Subdivision Map Act requires that security satisfactory to the CITY be provided to secure obligations under the Subdivision Improvement Agreement.
- E. Government Code Section 66499(a)(4) empowers the CITY to adopt an ordinance to allow lien agreements to secure Subdivision Improvement Agreements based upon the CITY finding that it would not be in the public interest to require the installation of the required improvements sooner than two (2) years after the recordation of the Subdivision map.
- F. Pursuant to Section 70-224 of the Hemet Municipal Code ("HMC"), CITY is authorized to accept a lien agreement for the substitution of an existing security which was furnished under Section 70-221, subject to the conditions, requirements and restrictions contained therein.
- G. A form of security for the Subdivision Improvement Agreement which OWNER now desires to replace with security known as a Lien Agreement, under the

provisions of Government Code Section 66499(a)(4) and Section 70-224 of the HMC.

- H. CITY has found and determined that it would not be in the public interest to require the installation of the required improvements pursuant to the Subdivision Improvement Agreement sooner than two (2) years after the recordation of the Subdivision map.
- I. OWNER warrants that OWNER is the record owner of and has fee title interest to all of the individual lots in the Property, as identified on the Subdivision that the Property is not subject to any mortgages, deeds of trust, or liens both as documented in that Title Report issued by _____ **[Named Title Co.]** issued on _____.
- J. Subject to the exceptions provided for by Section 70-224(d) of the HMC, OWNER has ceased the installation or construction of the improvements required by the Subdivision Improvement Agreement as allowed under the construction permits on the Property as identified on the Subdivision.
- K. The CITY Engineer has determined that the estimated costs to construct the required improvements do not exceed the unencumbered fair market value of the Property based on an appraisal approved by the CITY Engineer, that was prepared by an independent, California licensed Real Estate Appraiser, not more than sixty (60) days prior to the date of the Lien Agreement.
- L. OWNER represents and CITY has confirmed that OWNER has paid all outstanding fees pursuant to Chapter 70 of the HMC and has a deposit based fee account in good standing with the CITY.

NOW, THEREFORE, incorporating the above recitals, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES hereto mutually agree as follows:

I. OWNER's Performance and Obligations:

- A. OWNER hereby grants to CITY, in accordance with the terms and conditions of this Lien Agreement, a lien upon the Property described in **Exhibit "A"**, attached hereto and made part hereof, as security for the following obligations of OWNER:
 - (1) Payment to CITY of \$_____ comprised of \$_____ for cost of improvements specified in Exhibit "B" and cost of CITY fees by _____ in Section 1.3.
 - (2) Construction of the improvements specified in the Subdivision Improvement Agreement, hereinafter called "Improvements", pursuant to Section 70-221 of the HMC in the estimated amounts and for the purposes specified in the approved Engineer's Cost

Estimate, **Exhibit "B"**, attached hereto and made part hereof by this reference; provided, however, that OWNER's obligation under this Agreement shall extend to the actual cost of construction of the Improvements, notwithstanding that such costs may exceed the estimate set forth in **Exhibit "B"**, attached hereto and made part hereof; and

- (3) Payment of the balance of any fees, including fees for improvements or services described in Chapter 70 (collectively, "Fees"), in the amount required in accordance with the Hemet Municipal Code.

B. For so long as the Property remains subject to this Lien Agreement, OWNER shall not:

- (1) Request issuance by the Department of Real Estate of the Final Subdivision Public Report for the Property;
- (2) Transfer, sell, or permit the transfer or sale of any lot shown on the Subdivision; or
- (3) Commence work on any portion of the Improvements except as necessary to correct or prevent threats to the public health, safety or general welfare and with the prior written consent or order of the CITY.

C. Notwithstanding the above, fee title to the entire Property encumbered by this Lien Agreement, or to all lots designated on the Subdivision, may be sold in the aggregate to a single purchaser, provided that the proposed purchaser, prior to assuming title to the Property, executes a new lien agreement or provides alternative security acceptable to the CITY in accordance Section _____ of the HMC.

D. OWNER shall post with the CITY a cash deposit in the amount of _____ Dollars (\$_____) per recorded Subdivision Tract Map, regardless of whether the project was subdivided by a single Tract Map or by multiple Tract Map recordings through phasing, for the purpose of reverting the Property to acreage if the OWNER breaches or is in default of the terms of the Lien Agreement, and to be used by CITY to reimburse CITY for any costs which CITY may incur in processing a reversion to acreage map initiated pursuant to this Lien Agreement. Reversion to acreage and the cash deposit by reason of default or breach of the Lien Agreement shall only be applicable to Properties where none of the required public improvements for which securities were provided, have been installed and/or have been constructed. If the costs of a reversion to acreage of the Subdivision exceed \$_____, OWNER shall pay such additional costs to CITY prior to recordation of the reversion to acreage map. In addition, any unused portion of this deposit may be applied to any outstanding fees for inspection, tests and other related purposes for the

required Improvements upon termination of this Lien Agreement. If there are no outstanding fees, any unused portion of such deposit shall be refunded to OWNER following completion of such reversion.

- E. OWNER shall also post with the CITY a cash deposit to be used by the CITY to reimburse the CITY for any costs which the CITY may incur for the maintenance of any portion of Subdivision that has been graded, including but not limited to dust control, erosion control, fencing, maintenance for purposes of the health, safety or welfare of the public, and any other maintenance as reasonably required by the CITY. Said deposit shall be in the amount as approved by the CITY Engineer.
- F. Prior to obtaining any construction permits, including but not limited to grading, construction excavation or water permits, or commencing the installation and construction of any portion of the Improvements required by the Subdivision Improvement Agreement, OWNER:
 - (1) shall substitute other forms of security satisfactory to CITY in place of this Lien Agreement; provided however, OWNER shall not be permitted to obtain said permits, substitute such security or commence the installation and construction of any portion of the Improvements if less than one (1) year has elapsed since the date of recordation of this Lien Agreement; and
 - (2) shall deposit fees for inspections, tests and other related purposes.
- G. OWNER agrees to irrevocably grant, transfer and assign to CITY, its successors and assigns, in trust, with power of sale and right of entry and possession, all estate, right, title and interest of OWNER, now owned or hereafter acquired, in and under the Property for the purpose of the performance of OWNER's obligations and covenants under this Lien Agreement.
- H. OWNER agrees to appear in and defend any action or proceeding purporting to affect the CITY's lien upon the Property or the rights or powers of the CITY with respect to the Property; and also, if at any time the CITY is a PARTY to or appears in any such action or proceeding, or in any action or proceeding to enforce any obligation hereby secured, to pay all costs and expenses paid or incurred by the CITY in connection therewith, including, but not limited to, cost of evidence of title and reasonable attorneys' fees. OWNER further agrees that upon entry of any judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.
- I. OWNER agrees to indemnify, and hold harmless, the CITY, its officers, employees and agents from any liability whatsoever based or asserted upon any act or omission of OWNER, its officers, employees and agents relating to or in any way connected with the obligations arising under this Lien Agreement.

As part of the foregoing indemnity, OWNER agrees to protect and defend at its own expense, including attorneys' fees, the CITY, its officers, employees and agents in any legal action based upon such alleged acts or omissions.

- J. OWNER agrees to pay when due any and all taxes and assessments affecting the Property, and all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior to the lien created by this Lien Agreement.
- K. OWNER agrees at its sole cost and expense, to maintain and keep the Property in good condition and repair, including but not limited to maintaining storm water facilities, erosion control and fire prevention maintenance activities on the Property; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property; not to commit or permit any waste thereof or any act upon the Property in violation of the law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.
- L. OWNER agrees that the choice of remedy or remedies for OWNER's default or breach of this Lien Agreement shall be in the sole discretion of the CITY.
- M. OWNER has provided the CITY with sufficient evidence that the estimated costs for the remaining required Improvements, as determined by the City Engineer, including, but not limited to, master planned or "missing link" streets, drainage and sewer improvements, community facilities, off-site improvements, fire access, fire flow and traffic signals, originally required by conditions of approval, do not exceed the fair market value of the property based on a recent opinion of an independent, licensed real estate appraiser, which appraisal shall be conducted not more than sixty (60) days prior to the date any lien agreement is entered. OWNER shall furnish such appraisal to the CITY not fewer than forty-five (45) days prior to entering into any Lien Agreement as determined by the City Engineer.

II. City's Performance and Obligations:

- A. CITY, upon recordation of this Lien Agreement, shall release deposits and/or security which were previously supplied to the CITY and for which this Lien Agreement is being substituted.
- B. Pursuant to Section I.E hereof, upon delivery by OWNER and acceptance by the City Council of one of the securities as specified by Section _____ of the HMC in replacement of this Lien Agreement, and upon OWNER's request, the CITY shall release the Property from the provisions of this Lien Agreement and shall execute any necessary release in a form as required by law to enable the OWNER or its transferee to clear the record of title of the Property so release of the lien herein is achieved.

- C. Upon delivery by OWNER and acceptance by the City Council, of a replacement of this Lien Agreement pursuant to Section I.F hereof, by one of the securities as specified by Section _____ of the HMC and, upon OWNER's request, the CITY shall release all remaining amounts of deposits paid pursuant to Sections I.D and I.E hereof.
- D. In no instance shall this Lien Agreement compel the City to construct the required Improvements.

III. Effect of Lien Agreement.

- A. This Lien Agreement creates and constitutes a secured obligation in the form of a lien against the Property for the purposes of securing OWNER's performance of this Lien Agreement and the Subdivision Improvement Agreement. From the date of recordation of this Lien Agreement, a lien shall attach to the entire Property which shall have the first priority, but not less the priority of a judgment lien in an amount necessary to discharge all obligations contained in the Subdivision Improvement Agreement, this Lien Agreement and any fees. The CITY shall under no circumstances be obligated to subordinate the lien, but may do so in its sole and absolute discretion in a manner provided by law.
- B. OWNER shall have the right to convey fee title of the entire Property encumbered by this Lien Agreement to a single purchaser, so long as the proposed purchaser, prior to assuming title to the Property,
 - (1) executes a new lien agreement or provides alternative security acceptable to the CITY in accordance Section _____ of the HMC; and
 - (2) purchaser agrees in writing to accept and be bound by the terms and provisions of the applicable Subdivision Improvement Agreement.
- C. Notwithstanding any provisions of Chapter 70 of the HMC to the contrary, so long as this Lien Agreement is utilized for security as described herein, the CITY is not obligated to accept offers of dedication for street or drainage purposes on the Property.

IV. Events of Default; Breach. Upon the occurrence of any one of the following events, OWNER shall be deemed in default hereunder if OWNER fails to cure such occurrence within thirty (30) days after receipt of written notice of default from the CITY; provided, however, that if such event is of such a nature that it cannot be cured within such thirty (30) day period, then OWNER shall not be in default if it commences a cure in good faith within such thirty (30) day period and thereafter diligently prosecutes the cure to completion:

- A. Commencement of any work on the Improvements by OWNER, its agents or employees, prior to substitution of acceptable security with the CITY in place

of this Lien Agreement, except as specifically authorized by CITY with prior authorization in writing or by order to correct or prevent threats to the public health, safety or general welfare;

- B. Filing of any proceedings or action by or against OWNER to declare OWNER bankrupt or to appoint a receiver or trustee for OWNER or to reorganize OWNER or to make an assignment for the benefit of creditors or to do anything else of a similar nature or purpose under any state or federal bankruptcy or insolvency laws, if such proceedings or actions are not discharged within sixty (60) days;
- C. Levy of any attachment or writ of execution against OWNER and the Property whereby the Property is taken or occupied or attempted to be taken or occupied by someone other than OWNER and such attachment or execution is not released within sixty (60) days;
- D. Sale of any lot shown on the Subdivision prior to release of the lien created by this Lien Agreement, except as provided in Section III.B hereof;
- E. Request by OWNER of issuance by the Department of Real Estate of the Final Subdivision Public Report for the Property;
- F. Allowing the Property to be maintained in manner that falls below the required maintenance satisfactory to the CITY or as required by Section I.J hereof;
- G. The attachment of any other lien or judgment lien upon the Property;
- H. Breach by OWNER of any other term or condition of this Lien Agreement or of the Subdivision Improvement Agreement or OWNER's failure to fully and faithfully discharge its obligations hereunder within the time specified herein.

All references to OWNER in this Section shall be deemed to include OWNER's successors, assignees and transferees.

- V. CITY's Remedies. Upon the occurrence of any of the events described in Section IV, above, CITY may declare a breach of this Lien Agreement if OWNER fails to cure or to diligently prosecute the cure to completion, and the CITY, at CITY's option, may exercise any one or more of the following remedies:

- A. Pursue any or all of the remedies provided in the Subdivision Improvement Agreement and all remedies available to it by law;
- B. Enforce this Lien Agreement by appropriate action in court or as provided by law and in the event the enforcement is by action in court, the OWNER agrees that the amount of said lien shall include reasonable attorneys' fees which shall be taxed as a cost in any suit for such enforcement;

- C. Estimate the cost of the work required to complete the Improvements, and all fees, and foreclose said lien in said amount;
- D. Rescind the approval of any and all entitlements, permits or licenses associated with the Subdivision;
- E. Initiate proceedings for reversion of the real Property within the land division to acreage, at the expense of OWNER, in accordance with the provisions of the Subdivision Map Act and Chapter 70 of the HMC;
- F. Elect to foreclose by exercise of the power of sale stated herein.
- G. Pursue any other remedy, legal or equitable, for the foreclosure of a lien. OWNER, its heirs and assigns, shall pay reasonable attorneys' fees to be taxed as a cost in said proceedings.
- H. The failure of the CITY to take an enforcement action with respect to a default, or to declare a default or breach, shall not constitute a waiver of that default or breach, or any subsequent default or breach of OWNER.

VI. General Provisions.

- A. Recordation. This Lien Agreement shall be recorded by CITY in the office of the County Recorder of Riverside County immediately following execution of this Lien Agreement.
- B. Contingency. This Lien Agreement shall not take effect until it has been approved by the CITY and it has been recorded against the Property.
- C. Final Integrated Agreement. This Lien Agreement is intended to be the final expression of understanding between the PARTIES and supersedes any and all prior restrictions, promises, representations, warranties, agreements, understandings and undertakings between the Parties with respect to the within subject matter. No other statement or representation, written or oral, express or implied, has been received or relied upon entering into this Lien Agreement. All prior discussions, statements and negotiations shall be deemed merged into this Lien Agreement.
- D. Further Assurances. The PARTIES agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Lien Agreement and the intentions of the PARTIES.
- E. Governing Law. This Lien Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California. The PARTIES agree that all actions or proceedings arising in connection with this Lien Agreement shall be tried and litigated only in the state courts located

in the County of Riverside, State of California, or federal courts located in the Central District of California in Riverside.

- F. Headings. The captions and Section headings used in this Lien Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- G. Modification, Waiver and Amendment. No breach of this Lien Agreement or of any provision herein may be waived except by an express written waiver executed by the PARTY waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach or provision of this Lien Agreement. This Lien Agreement may be amended, altered, modified or otherwise changed only by a writing duly executed by the PARTIES hereto or their authorized representatives. No modification, waiver, amendment or discharge of this Lien Agreement shall be valid unless the same is in writing and signed by all PARTIES.
- H. No Other Inducement. The making, execution and delivery of this Lien Agreement by the PARTIES hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- I. Severability. If any term, provision, covenant or condition of this Lien Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Lien Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Lien Agreement shall be valid and enforceable to the fullest extent permitted by law.
- J. Successors and Assigns. This Lien Agreement shall run with the land and inure to the benefit of and bind all PARTIES hereto, their heirs, devisees, administrators, executors, successors and assigns.
- K. Attorney Fees. In the event any action at law or in equity is brought to enforce the terms of this Lien Agreement, the prevailing PARTY shall be entitled to litigation costs and reasonable attorney fees
- L. OWNER not Agent of CITY. Neither OWNER nor any of OWNER's officers, directors, agents, employees, contractors, or successors in interest are or shall be considered to be agents of the CITY in connection with the performance of any of the OWNER's obligations under this Lien Agreement.
- M. Notice. All notices required by or provided under this Lien Agreement shall be in writing and delivered in person or sent by certified or registered mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail.

Notice to CITY: City of Hemet

Attention: City Engineer
444 E Florida Avenue
Hemet, CA 92543

Notice to Owner: _____

With Copy to: Burke, Williams & Sorensen LLP
1770 Iowa Drive, Suite 240
Riverside, CA 92507

- N. Counterparts. This Lien Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- O. Authority. Each person signing this Lien Agreement warrants that s/he is duly authorized to execute this Lien Agreement on behalf of and bind the PARTY each purports to represent.

IN WITNESS WHEREOF, the Parties hereto have executed this Lien Agreement.

OWNER

_____, (LLC/LP, a State Limited Liability
Company)

By its: _____

Address: _____

By: _____

Printed Name: _____

Title: _____

CITY

By: _____
Mayor, City of Hemet

Attest: _____
City Clerk

Approved as to Form:

City Attorney

SIGNATURE OF OWNER MUST BE ACKNOWLEDGED BY NOTARY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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Title(s)

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☐ General
☐ Attorney-In-Fact
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☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

EXHIBIT “A”

LEGAL DESCRIPTION

EXHIBIT “B”

ENGINEER'S COST ESTIMATE



City Council Staff Report

Agenda # 10.A

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Christopher Lopez, City Manager
H.P. Kang, Community Development Director

DATE: March 24, 2020

RE: An **Interim Ordinance** Prohibiting the Construction or Operation of Private Detention Centers and Community Detention Facilities for Unaccompanied Minors in the City of Hemet

RECOMMENDED ACTION:

Adopt an Interim Ordinance prohibiting the construction or operation of private detention centers and community detention facilities for unaccompanied minors in the City of Hemet.

BACKGROUND:

On October 11, 2019, Governor Newsom signed into law Assembly Bill 32 (Bonta), which bans private prisons and detention facilities from operating in California, and prevents the State from entering into or renewing contracts with for-profit prison companies after January 1, 2020, phasing out such facilities by 2028. Just before the new State law went into effect, the federal government awarded new contracts to private companies that operate private detention centers in California.

The City has been contacted by an organization seeking to establish a community detention facility for unaccompanied minors in the City. This organization has stated that it has already leased a facility in the City for such purposes. The City's Zoning Ordinance does not expressly address uses of this nature.

DISCUSSION:

Government Code section 65858 authorizes the City to adopt an Interim Ordinance prohibiting uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to consider or study within a reasonable time. An interim ordinance of this nature must be approved by a 4/5th vote of the legislative body and lasts for 45 days unless extended.

An interim ordinance is only permitted if there is “a current and immediate threat to the public health, safety, or welfare,” and approving entitlements for the use “would result in that threat to public health, safety, or welfare.” As noted in the legislative findings in the proposed ordinance, there is a multitude of evidence that the operation of private detention centers and community detention facilities for unaccompanied minors present serious public health, safety and welfare concerns for the detainees, their households, and the broader community.

Community Development staff have been working on a proposed ordinance addressing private detention centers and community detention facilities for unaccompanied minors and intends to present the ordinance to the Planning Commission at its next meeting.

FISCAL IMPACT:

No General Fund Impact.

ATTACHMENTS:

1. Ordinance

Respectfully Submitted,

H.P. Kang
Community Development Director



**CITY OF HEMET
Hemet, California**

ORDINANCE NO. 2020-XXX

**AN INTERIM ORDINANCE OF THE CITY OF HEMET,
CALIFORNIA PROHIBITING THE CONSTRUCTION OR
OPERATION OF PRIVATE DETENTION CENTERS AND
COMMUNITY DETENTION FACILITIES FOR
UNACCOMPANIED MINORS IN THE CITY OF HEMET**

WHEREAS, on October 11, 2019, Governor Newsom signed into law Assembly Bill 32 (Bonta), which bans private prisons and detention facilities from operating in California, and prevents the State from entering into or renewing contracts with for-profit prison companies after January 1, 2020, phasing out such facilities by 2028; and

WHEREAS, just before the new State law went into effect, the federal government awarded new contracts to private companies that operate private detention centers in California; and

WHEREAS, a multitude of studies and public testimony describe the alarming status of private detention center operations, including a February 2019 report by the California Attorney General¹ which found that privately operated immigration detention centers in California maintain poor living conditions, including, but not limited to, issues related to inadequate access to medical and mental health care and obstacles to contacting family and other support systems; and

WHEREAS, an April 2017 report by the American Academy of Pediatrics² concluded that no time in detention is safe for children, and further detailed the impacts of detention on children, adults, and families, which includes negative physical and emotional trauma that may lead to long-term negative impacts; and

¹ See, <https://on.ca.gov/sites/allfiles/agweb/pdfs/publications/immigration-detention-2019.pdf>

² See, <https://pediatrics.aappublications.org/content/pediatrics.early/2017/03/09/0eds.2017-0483.full.pdf>

1 **WHEREAS**, the economic impacts on individual detainees, households, and
2 communities result in financial insecurity, with a compounded disadvantage for low income
3 immigrant communities in Southern California, as detailed in a September 2015 study by
4 the UCLA Institute for Research on Labor and Employment³; and

5 **WHEREAS**, research on the spillover effects on surrounding communities with high
6 incarceration rates reveals that such neighborhoods "endure disproportionate stress,
7 since these communities face disrupted social and family networks alongside elevated
8 rates of crime and infectious disease,"⁴ as well as increased rates of anxiety and
9 depressive disorders; and

10 **WHEREAS**, the federal government regularly outsources the housing and care for
11 undocumented immigrants detained based upon their immigration status to for-profit
12 prisons corporations and, for some minor undocumented immigrants, to nonprofit
13 organizations⁵; and

14 **WHEREAS**, in recent months, the City met with a private organization that desired
15 to develop a Community Detention Facility for Unaccompanied Minors within the City
16 ("Subject Facility"); and

17 **WHEREAS**, the Subject Facility upon further review was intended as a privately-
18 run detention facility, and therefore may be prohibited under Assembly Bill 32;

19 **WHEREAS**, the proposed use does not currently fall into any use in the City's
20 Municipal Code and without amending the City's Zoning Ordinance may create confusion
21 with permissible uses, such as "emergency shelter," defined under Municipal Code
22 Section 90-302; and

23 **WHEREAS**, the prohibition of private detention centers would further the goals,
24 objectives, and policies listed in the City's General Plan and prevent irreversible and
25 incompatible development, protect the health and well-being of City residents; and impede

26 _____
27 ³ See, <https://escholarship.org/uc/item/23hOr120main>

28 ⁴ See, <https://www.theatlantic.com/health/archive/2015/03/frow-incarceration-infects-a-community/385967/>

⁵ See <https://www.thenonproffitimes.com/inpt/articles/nonprofits-shouldering-care-migration-detainees/> ;
see also, <https://www.scu.edu/ethics/all-about-ethics/nonprofit-detention-centers-for-migrant-children/>

1 adverse impacts on neighborhoods and the surrounding environment by allowing the
2 necessary time needed to develop appropriate regulations and standards; and

3 **WHEREAS**, "Private Detention Centers" and Community Detention Facilities for
4 Unaccompanied Minors" are not currently enumerated in the Hemet Municipal Code and
5 therefore, the Interim Ordinance is designed to allow the City to further evaluate the
6 impacts of such facilities on its residents and neighborhoods and to ensure that these
7 facilities are not confused with supportive or transitional housing intended to provide
8 housing for the homeless, or other housing types intended for minors or other
9 incapacitated individuals placed under the consent of a parent or guardian or under the
10 authority of the State Welfare and Institutions Code or persons housed or detained under
11 the authority of the State Penal Code. The Interim Ordinance will prevent the construction
12 or operation of these facilities pending the consideration and adoption of permanent land
13 use regulations.

14 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES**
15 **HEREBY ORDAIN AS FOLLOWS:**

16 **Section 1. FINDINGS.** Based upon the above recitals and the record, the City Council
17 finds:

18 A. The development in the City of Private Detention Centers or
19 Community Detention Facilities for Unaccompanied Minors presents a current and
20 immediate threat to the public health, safety, and welfare, and that the approval of
21 additional subdivisions, use permits, variances, building permits, or any other
22 applicable entitlement for use which is required in order to comply with the zoning
23 ordinance would result in that threat to public health, safety, or welfare.

24 B. Private Detention Centers and Community Detention Facilities for
25 Unaccompanied Minors uses may be in conflict with the zoning proposals currently
26 being studied by the Planning Department for private detention facilities.

27 C. This Ordinance will protect the public health, safety, and welfare.
28

1 D. The City Council finds this Ordinance is not subject to the California
2 Environmental Quality Act pursuant to California Code of Regulations, Title 14,
3 Section 15060, Subdivision (c)(2) and Section 15061, Subdivision (b)(3), because
4 adoption of the Ordinance will not result in a directly or reasonably foreseeable
5 indirect physical change in the environmental and has no potential for resulting in
6 a significant effect on the environment as the Ordinance will maintain the status
7 quo.

8 **Section 2. DEFINITIONS.** The following term(s), whenever used in this Ordinance,
9 shall be defined in this section. Words and phrases not defined here shall be construed
10 as defined Chapter 90 of the Hemet Municipal Code, if defined therein.

11 A. **COMMUNITY DETENTION FACILITY FOR UNACCOMPANIED**
12 **MINORS.** A facility operated by a private or nongovernmental person or entity to
13 house unaccompanied, undocumented minors in the custody of the federal
14 government.

15 B. **PRIVATE DETENTION CENTER.** A facility operated by a private or
16 nongovernmental person or entity where persons are incarcerated or otherwise
17 involuntarily confined for purposes of execution of a punitive sentence imposed by
18 a court, or detention pending a trial, hearing, or other judicial or administrative
19 proceeding, except:

20 1. A Private Detention Center shall not include any facility
21 described in Penal Code Section 9502.

22 2. However, a Private Detention Center shall include a facility
23 described in Penal Code Section 9502, subsection (d), if that facility is used
24 to house persons in the custody of the federal government.

25 **Section 3. PROHIBITION.** Notwithstanding any provisions of the Hemet Municipal
26 Code to the contrary, after the effective date of this Urgency Ordinance no permit or
27 entitlement shall be issued under Chapter 90, or any other provision of the Hemet
28

1 Municipal Code for the construction, operation, establishment, or expansion of the
2 following uses:

3 A. Private Detention Center.

4 B. Community Detention Facility for Unaccompanied Minors

5 **Section 4. CITYWIDE APPLICATION.** This Ordinance shall apply Citywide.

6 **Section 5. HARDSHIP EXEMPTIONS.** The City Council, by resolution, may grant an
7 exemption from the provisions of this Ordinance in cases of extreme hardship duly
8 established to the City Council's satisfaction. An application for hardship exemption shall
9 be filed with the City Clerk on forms provided by the Department of City Planning.

10 **Section 6. DURATION OF ORDINANCE.** This Ordinance shall be in force and effect
11 for 45 days from its date of adoption. The City Council may extend this Ordinance for a
12 period of 10 months and 15 days, subject to a second extension of one year, for a total
13 period of two years from the date of initial adoption, by council resolution as provided in
14 Government Code Section 65858.

15 **Section 7. APPLICABILITY OF ZONING CODE.** The provisions of this Ordinance
16 supplement those set forth the Hemet Municipal Code and any other City ordinance, and
17 do not confer any right or benefit not otherwise conferred under existing law.

18 **Section 8. SEVERABILITY.** If any portion, subsection, sentence, clause, or phrase of
19 this Ordinance is for any reason held by a court of competent jurisdiction to be invalid,
20 such a decision shall not affect the validity of the remaining portions of this ordinance. The
21 City Council hereby declares that it would have passed this Ordinance and each portion
22 or subsection, sentence, clause, and phrase herein, irrespective of the fact that any one
23 or more portions, subsections, sentences, clauses, or phrases be declared invalid.

24 **Section 9. SAVINGS CLAUSE.** The provisions of this Ordinance do not apply to the
25 extent that their application would result in a taking requiring compensation, would deprive
26 any person of constitutional or statutory rights or privileges, or would otherwise be
27 inconsistent with state or federal law.

1 **Section 10. URGENCY CLAUSE.** The City finds and declares that this Ordinance is
2 required for the immediate protection of the public peace, health, welfare, and safety for
3 the following reasons:

4 The City must carefully consider the most appropriate,
5 comprehensive, and effective alignment and implementation
6 of all relevant laws, including California Assembly Bill 32, to
7 make the appropriate amendments to the Hemet Municipal
8 Code, and this Urgency Ordinance is necessary to prevent
9 potential irreversible adverse impacts on neighborhoods. This
10 Urgency Ordinance is needed to protect the public peace,
11 health, and safety of the residents of Hemet by limiting the
12 impacts of Private Detention Centers and Community
13 Detention Facilities for Unaccompanied Minors as evidenced
14 by studies and public testimony that describe a multitude of
15 quality of life issues associated with these facilities. This
16 Urgency Ordinance is of urgent matter because it is
17 anticipated that without a prohibition on Private Detention
18 Centers and Community Detention Facility for
19 Unaccompanied Minors, recommendation of the permanent
20 ordinance regulating private detention centers would be
21 undermined. Therefore, pursuant to Government Code
22 sections 65858, this interim urgency ordinance shall become
23 effective immediately upon adoption and shall remain in effect
24 for forty-five (45) days thereafter unless amended, repealed
25 or extended by the City Council as permitted by law.

26 **Section 11. PUBLICATION.** The City Clerk is authorized and directed to cause this
27 ordinance to be published within fifteen (15) days after its passage in a newspaper of
28 general circulation and circulated within the City in accordance with Government Code

1 Section 36933(a) or, to cause this ordinance to be published in the manner required by
2 law using the alternative summary and posting procedure authorized under Government
3 Code Section 36933(c).

4 **INTRODUCED** at the regular meeting of Hemet City Council on March 24, 2020.

5 **PASSED, APPROVED AND ADOPTED** at a regular meeting held on March 24, 2020.
6
7

8 _____
Russ Brown, Mayor

10 **ATTEST:**

APPROVED AS TO FORM:

11
12 _____
13 Clay James, Deputy City Clerk

14 _____
Eric S. Vail, City Attorney

1 State of California)
2 County of Riverside)
3 City of Hemet)

4 I, Clay James, Deputy City Clerk of the City of Hemet, do hereby certify that the
5 foregoing urgency Ordinance was introduced and adopted on the 24th day of March 2020,
6 and was passed by the following vote:
7

8 **AYES:**

9 **NOES:**

10 **ABSTAIN:**

11 **ABSENT:**

12

13

Clay James, Deputy City Clerk

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City Council Staff Report

Agenda # 10.B

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Christopher Lopez, City Manager
Ericka Murphy, Executive Analyst

DATE: March 24, 2020

RE: Novel Coronavirus (COVID-19) Emergency Proclamation Update

RECOMMENDED ACTION:

For informational purposes only.

BACKGROUND:

At the March 16, 2020 Emergency Meeting of the City Council, staff was directed to maintain an ongoing agenda item for the COVID-19 Emergency Declaration. This report is intended to provide the Council with updates on the efforts made toward mitigating impacts to the community.

March 16, 2020

On March 16th, the Council declared a local emergency, which involved the following:

1. Acknowledgement of the risk that the potential further spread of COVID-19 presents to the public health and safety to persons and property within the City of Hemet; and
2. Declaration of a local emergency as authorized in Government Code Sections 8630 and 54956.5, and Chapter 26 of the Hemet Municipal Code; and
3. Use of teleconferencing and other electronic means to promote and maintain social distancing among Council Members and the public while handling the City's business; and
4. Authorization of the City Manager, as the Director of Emergency Services, to exercise his powers and duties as provided in the Hemet Municipal Code, and pursuant to the Disaster Preparedness Plan.

That same day, the City Manager closed the Library to the public and limited public access to the City's service counters at City Hall, Covell, and the Public Works Yard, to the hours between 7:30 am – 10:00 am and 3:00 pm – 5:30 pm. The City Manager also

authorized the Police Department's lobby to be closed to the public and cancelled/postponed all facility reservations and City-hosted events, including

- Hemet Police Citizen's Academy
- Hemet Fire and Police Ride Along Programs and Public Tours
- Hemet Citizens Emergency Response Team

Other major community events and gathering spaces that were cancelled include:

- Ramona Pageant & Spring Festival
- Simpson Center closed to the public

The City Manager sent a memo to all Hemet staff members with CDC guidelines and recommendations from Riverside County Public Health Department. The public also received information pointing them to the City's website where relevant updates and recommendations are posted: hemetca.gov/covid-19.

March 17, 2020

Following updated recommendations from Riverside County Health, the City Hall lobby occupancy was limited to three members of the public at a time; signage was posted on the City's website, at the entrance of City Hall, and throughout the lobby; and, limited seating was provided outside of each building. Also, in furtherance of the County's directive, all in-person meetings that included more than 10 attendees were directed to be conducted either telephonically or electronically.

Based on directives issued on March 16th from the County Health Department, and Governor Newsom's executive order, staff developed a public comment form on the City's website to allow members of the public to provide their comments, in addition to the conference line used at the March 16th emergency meeting. We have also instituted a 6-foot separation between people seated in the Council Chamber.

March 18, 2020

At 3:00 p.m., all service counters at City Hall, Covell, and Public Works were closed to the public. While staff continues to provide services, they will only be available through telephone, or electronic service. Staff also collaborated with the Chamber of Commerce to develop an informational guide on the changes in business hours of Hemet businesses.

Service Augmentation

- Staff developed a website and continually updates it: hemetca.gov/covid-19
- The public was provided with a "how-to" guide on conducting electronic business with staff.
- Water service disconnections were suspended.
- Library book due dates were extended until May 6th.
- Online resources were publicized on the City's social media platforms and websites.

ATTACHMENT(S):

None.